IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

THE STATE OF TEXAS, Plaintiff	)	
VS.	)	CIVIL ACTION NO. 5-96CV91
THE AMERICAN TOBACCO COMPANY, ET AL	)	

ORAL DEPOSITION
OF
PATRICIA A. STOUT, Ph.D.

VOLUME III

(ACCOMPANIES VIDEOTAPE)

SEPTEMBER 22, 1997

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TEXARKANA DIVISION

THE STATE OF TEXAS, Plaintiff	)	
VS.	)	CIVIL ACTION NO. 5-96CV91
THE AMERICAN TOBACCO COMPANY; R.J. REYNOLDS TOBACCO COMPANY; BROWN & WILLIAMSON TOBACCO CORPORATION; B.A.T. INDUSTRIES, P.L.C.; PHILIP MORRIS, INC.; LIGGETT GROUP, INC.; LORILLARD TOBACCO COMPANY, INC.; UNITED STATES TOBACCO COMPANY; HILL & KNOWLTON, INC.; THE COUNCIL FOR TOBACCO RESEARCH-USA, INC. (Successor to Tobacco Institute Research Committee); AND THE TOBACCO INSTITUTE, INC., Defendants	)	

* *

ORAL DEPOSITION OF PATRICIA A. STOUT, VOLUME III

* *

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ANSWERS AND DEPOSITION OF PATRICIA A. STOUT, VOLUME III, a witness called by the DEFENDANT PHILIP MORRIS, taken before SALLY KING, Certified Court Reporter for the State of Texas, on SEPTEMBER 22, 1997, beginning at 1:17 p.m. and ending at 5:07 p.m., at the offices of the Attorney General of the State of Texas, 300 West 15th Street, Austin, Texas 78701, pursuant to the Federal Rules of Civil Procedure.

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Also present:
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LEGAL MEDIA (512) 708-1001

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PATRICIA A. STOUT, VOLUME III

was called as a witness and, having been duly sworn, testified as follows:

EXAMINATION

BY MS. TYLER: 13:18

THE VIDEOGRAPHER: On the record at 1:17. 13:18

Q. Could you please state your name for the record? 13:18

A. It's Patricia Stout. 13:18

Q. Professor Stout, it's nice to see you again. You will recall that I'm Julia Tyler with the law firm of Johnson & Tyler in Washington, D.C. and I represent Philip Morris in this matter. Do you understand that you are here today to continue the deposition that I began of you approximately one month ago on August 21st and 22nd, 1997? 13:18

A. I do. 13:18

Q. I would like to go over our ground rules again to ensure that things go smoothly today. You understand that you are under oath here today? 13:18

A. Right. 13:18

Q. You understand that you have sworn to tell 13:18

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the truth? 13:18

A. Right, I do. 13:18

Q. You understand that you have sworn to tell the truth just as you swore to tell the truth back on August 21 and 22, 1997; is that correct? 13:18 13:18 13:19

A. That's right. 13:19

Q. And you understand that if you fail to tell the truth there are some very serious repercussions that can ensue. Do you understand that? 13:19 13:19 13:19 13:19

A. I understand that, yes. 13:19

Q. Do you also understand that the testimony you give here today will be taken down into a transcript which can and will be read by others? 13:19 13:19 13:19

A. I do. 13:19

Q. And those others would include the judge and jury in this case. Do you understand that? 13:19 13:19

A. I do. 13:19

Q. And do you also understand that that transcript could be read by others in your professional field of expertise? 13:19 13:19 13:19

A. I understand that, yes. 13:19

Q. Including colleagues at the University of 13:19

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Texas at Austin and other universities as well. Do you understand that? 13:19
A. I do. 13:19
Q. I also want to remind you that you need to answer verbally because as talented as Sally is here, she can't take down a nod of your head; and again, if you don't understand a question please feel free to ask me to rephrase it and I will be happy to do so. 13:19
A. All right. 13:19
Q. Otherwise I will assume that you've understood the question that I'm asking and that you are answering that question. Do you understand that? 13:19
A. I do. 13:19
Q. Please try to let me finish my question before you answer, and I will return the favor. Is that all right? 13:20
A. Yes. 13:20
Q. And if you need a break or refreshments, just let me know. I'll be happy to break at any time. Can we agree to these rules, as we agreed to them back in the August? 13:20
A. We can, yes. 13:20
Q. Professor Stout, following your deposition on 13:20

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August 21 and 22, did you receive a copy of the transcript of your testimony? 13:20
A. I have, yes. 13:20
Q. Have you read it? 13:20
A. I have. 13:20
Q. Have you completed the enclosed errata sheet? 13:20
A. I have. 13:20
Q. Have you returned it to the court reporter? 13:20
A. Not yet, no. 13:20
Q. So you have made corrections to the transcript? 13:20
A. I have, yes. 13:20
Q. Do you recall any of those corrections that you have made? 13:20
A. Some of them, names were misunderstood, and so I made those corrections. I also corrected one of the quotes, I think, that was read out of one of the exhibits was not a verbatim quote, and so I corrected that, and I also noted that two of the articles I was asked to comment on had not been presented to me to look at for the questions. 13:20
Q. And which two were those? 13:21
A. Two by Gary Wilcox, as I recall. 13:21
Q. All right. It sounds, though, with the 13:21

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exception of the two articles from Gary Wilcox, that your changes were ministerial, typographical, those types of issues? 13:2
A. I think the bulk, yes. 13:2
Q. Were there any others that were not that we haven't talked about? 13:2
A. I don't think so, no. 13:2
Q. So they were ministerial and typographical, as you understand it? 13:2
A. That's correct. 13:2
Q. I am handing you what was previously marked as Stout Exhibit Number 6, which is your expert disclosure filed in this case. And we have discussed this expert disclosure at some length and I would like to pick up sort of where we left off -- 13:2
A. Okay. 13:2
Q. -- on your expert disclosure. 13:2
A. Good. 13:2
Q. Professor Stout, I believe you testified about a month ago that you wrote this document; is that correct? 13:2
A. That's correct. That I had -- I believe I said up until -- part of Page 3 was added that were requests for additional disclosures 13:2

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from the defendants.
Q. But for example, the sections which discussed the opinions you intend to offer at trial, you wrote those sections and that would be Subsections A through F; is that correct?
A. That's correct, yes.
Q. And as I understood it, you also testified that the only revisions you made to this document were that in response to a request from counsel for the State of Texas you tried to make this document more detailed; is that correct?
A. That's correct.
Q. I believe they asked you to put in some more detail and some more opinions and you tried to do that; is that correct?
A. I believe what I had originally submitted, it was not as complete as this. I had never written one of these documents before, so I was unsure what it was supposed to contain.
Q. And since you had never written one of these documents or this type of document before, did counsel for the state read you the court's order regarding the requirements for this expert disclosure?

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A. I can't recall exactly what the conversation was over the telephone, if I was read a document, but I was told about the types of things that are included in the document of this nature. 13:2
Q. So you understood that you were required to create a complete and accurate summary of the opinions that you will give in this case; is that correct? 13:2
A. Yes, that's correct. 13:2
Q. Did you try to satisfy those requirements? Did you try to do just that? 13:2
A. I did, yes. 13:2
Q. This document was submitted to me with a letter dated August 14, which is seven days prior to your last deposition with me. When did you complete your final draft of this expert disclosure, Professor Stout? 13:2
A. I don't recall the date. I don't recall the date exactly. 13:2
Q. Was it close to August 14? Do you think it was the day before or a couple of days before it was submitted to me? 13:2
A. It could have been, but I don't really recall the time line on that. 13:2

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Q. Was it -- was it within a week of when it was submitted to me? Or maybe it's easier to reference it by how long -- how much time elapsed preceding our first deposition here together. Do you recall if it was a week or -- 13:24

A. Yeah, I really --

Q. -- 10 days? 13:24

A. I really can't recall. Again, I believe that there was a deadline for submission of certain paperwork, and I was working to meet that deadline. So I'm not quite sure what the date was on it. 13:24

Q. Do you recall if you are much like me that you were bumping against that deadline somewhat or -- 13:25

A. I'm bumping up against deadlines all the time, so -- 13:25

Q. Do you recall bumping up against the deadline in this case? 13:25

A. Well, I assume it was close to the deadline. 13:25

Q. And Professor Stout, you did everything you could to create a complete and accurate listing of your opinions as required by the court's order governing expert discovery in 13:25

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this case when you created Stout Exhibit Number 6, your expert disclosure, did you not? 13:25

A. I did to the best of my ability, given the knowledge that I had at my disposal at that point in time. 13:25

Q. Okay. I would like to pick up where I left off in discussing your opinions with you, and I believe when we broke back on August 22nd, 1997, we were discussing your opinions as expressed in Subparagraph D of your expert disclosure. And I'll just read that paragraph into the record. You state that your opinions, the opinions that you will offer at trial include, "D, the use of imagery and themes in cigarette advertisements and marketing campaigns and the impact of imagery and themes in cigarettes advertisements on the consumer and on the general public, specifically including the use of various creative executional variables like endorsers and visual and verbal message components. Defendant cigarette manufacturers employ imagery and themes in their advertising and promotions 13:25 13:26

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which are likely to attract the attention of young people. For example, the use of cartoon-like characters and nonverbal messages that convey images of cool or independence are attractive to underage individuals." Did I read that correctly? 13:26

A. Yes, you did. 13:26

Q. Professor Stout, what will your testimony at trial be with regard to the, quote, "use of imagery and themes in cigarette advertisements and marketing campaigns and the impact of imagery and themes in cigarettes advertisements on the consumer and on the general public"? 13:26

A. Well, I have -- in the materials that I have reviewed, their imagery is used quite frequently in advertising for tobacco products and cigarette advertisements in particular. And I will be commenting on the use of that imagery in those ads. 13:27

Q. You say the imagery is used frequently in advertisements and specifically in cigarette advertisements. Imagery is used in most advertising; isn't that correct? 13:27

A. That's correct. 13:27

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Q. So -- and as we discussed when we sat here a month ago, the imagery used in cigarette advertisements does not -- is not really very different from imagery used in advertisements for other consumer products; is that correct? 13:2
A. Cigarette advertisements use imagery that also can be found in other products or advertising for other products, as well some of that imagery is -- some of that imagery is used -- is likely to attract the attention of young people and it's being used in advertising for a product that it's illegal for them to use. 13:2
Q. Tell me what specific cigarette advertising campaigns you are going to testify about with regard to imagery and themes being used therein. 13:2
A. Well, I have looked at a number of ads, and clearly some brands make more use of imagery than others do in their advertising, so I will be commenting more specifically on those brands. 13:2
Q. And my question to you is: What specific cigarette advertisements do you intend to testify about regarding imagery and themes? 13:2

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A. Well, I can speak to the brands that -- some of the brands at least that use images rather than I don't -- I'm not certain you are asking me to name every advertisement at this point in time. 13:28 13:29 13:29 13:29 13:29

Q. Well --

A. I have looked at a lot of advertisements. 13:29

Q. -- do you know what cigarette advertisements you will discuss at trial in this case? 13:29 13:29

A. There are a number of advertisements from the group that I have looked at that I would be likely to discuss at trial, depending on how a question was posed to me. 13:29 13:29 13:29 13:29

Q. Why don't we discuss those. Why don't you -- I'd like you to list for me all the cigarette advertisements that you think you might be testifying about at trial in this case. 13:29 13:29 13:29 13:29

A. Is there a specific set of questions that you have that you want me -- 13:29 13:29

Q. No, I'd like you --

A. -- to respond to? 13:29

Q. I'd just like you to recite the list of cigarette advertisements that you intend to testify about at trial regarding the use of themes and imagery. 13:29 13:29 13:29

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A. So you want me to name every advertisement out of all of the ads I'd seen? 13:2
Q. Uh-huh.
A. Okay. Do we have -- do we have some I could go through today then? I have looked at -- 13:2
Q. Why don't you --
A. -- hundreds. It will be very difficult for me to recall from memory every single one. 13:2
Q. Why don't we just get started with the ones you remember. Why don't we get started with the cigarette advertisements that you remember that you intend to testify about at trial. 13:3
A. And what would be the question I would be responding to? 13:3
Q. I would like to know what your testimony about that cigarette advertisement will be with regard to the use of themes and imagery. 13:3
A. Okay. So I guess there are a number -- like I say, there are a number of -- I have looked at hundreds of ads. 13:3
Q. I understand that, Professor Stout, but you also understand that trial in this case begins in one week. 13:3

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A. That's correct.
Q. So I would like for you to list for me the cigarette advertisements you intend to testify about and tell me what your testimony will be with regard to their use of themes and imagery.
A. Perhaps because I -- I guess I'm finding it difficult to answer your question as you're asking, given the number of ads that I have looked at. I could comment more generally that I have looked at advertisements for certain brands that tend to utilize imagery a great detail in their advertising, and I could name those brands.
Q. So as you sit here today, Professor Stout, you are not prepared to identify for me a single cigarette advertisement that you intend to testify about at trial; is that correct?
A. No, that's not correct. I'd be happy -- if you had advertisements that you wanted me to show you, I would be happy to go through those --
Q. But as you sit here --
A. -- and comment on those.

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Q. -- you don't recall any of them? 13:31
A. I have looked at hundreds of ads. 13:31
Q. I understand you've looked at hundreds of ads. We have established that you've looked at hundreds of ads. But one week from trial, are you telling me that you cannot recall off the top of your head as you sit here a single cigarette advertisement that you intend to testify about at trial? 13:31
A. I can name categories. I can tell you for certain brands that there are numerous ads that employ imagery, but I think it would be very difficult for me to try to explain to you, let's take Marlboro as an example, to try to differentiate for you verbally what those visual images are or pictures are across five or ten different ads in words. 13:31
Q. Well, let's discuss the brands then since that seems to be the only way we're going to get at this. What brands of cigarettes do you intend to testify about? 13:32
A. Well, clearly, imagery is used in the ads that I have looked at. Imagery is used in brands like Marlboro, for example, which employs a lot of outdoor western imagery. 13:32

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Also imagery is very prevalent in other brands as well, certainly one of the more recent brands for Camel, which has used Joe Camel as one of images that's been prevalent in those ads. Imagery has been used in previous campaigns for Camel as well, though. 13:32

Another brand that has a very distinct set of images that are employed throughout the campaigns is Newport, which uses groups of young people that are in -- doing various kinds of activities that would appeal, appeal to young people who might see those ads. 13:32

Q. What research have you done, Professor Stout, regarding images that appeal to young people? 13:33

A. I have looked at studies and reviewed materials that has looked at how young people recognize and what their awareness are -- is, rather, of certain images and ads. 13:33

Q. Can you name those studies for me? 13:33

A. There have been some studies that have been done by Pierce, as I recall and Fischer rather -- Fischer. Cases that have been published in JAMA, for example. There are 13:33

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several that have been done.

Q. And do you rely on those secondary sources for your opinions regarding the alleged ability of imagery in themes and cigarette advertisements to attract the attention of young people?

A. They are part of the materials that I use in forming my opinion, yes.

Q. What are the rest of the materials that you use in forming your opinion?

A. Well, in work -- some work that I have done with students, I believe a dissertation was delivered to you after our previous deposition that has looked at how images appeal to individuals and how they are used to connote different things about a product or brand. As well in numerous textbooks and the like, there are references on how images are used, in fact, to make needs salient for individuals, and obviously young people are in that group.

Q. Apart from Marlboro, Joe Camel and Newport, what other cigarette advertising campaigns or brands do you intend to discuss with regard to their imagery and themes?

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A. Well, clearly, many brands use imagery in their advertising, some that are very distinct. Benson and Hedges, as well, has some distinct imagery. Certainly, some of the cigarette brands that are advertised to women, like Virginia Slims and Misty and the like, make use of distinct images. 13:35

Q. Benson and Hedges, you testified, uses distinct images. What are those distinct images? 13:35

A. Well, depending on the campaign, some of the more recent campaigns have individuals outside of where one would normally be smoking. So they may be riding on top of a train or they may be outside of a building or outside of an airplane. And that -- those are -- that's from more recent campaigns. 13:35

Q. Now, you would agree with me, would you not, Professor Stout, that other consumer products used advertising which depicts people standing outside; isn't that correct? 13:35

A. I'm sure there are brands that do. 13:36

Q. I'm talking about other -- not just talking about other consumer -- I'm not talking about other cigarette brands, I'm talking about 13:36

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other consumer products use images of people standing outside; isn't that correct? 13:3
A. I'm sure they do. I'm just trying to recall something I have seen recently. 13:3
Q. And Newport, what is the salient image that sticks out in your mind when you think of the Newport brand? 13:3
A. Well, Newport tends to use groups of young people who are clearly having fun participating in some kind of a usually outdoor activity. It obviously goes part and parcel with the slogan that's used by the brand, Alive with Pleasure. And so it connotes those images with that tag line and makes that type of a -- makes that type of a connotation and is a message that people would take away from the -- one assumes the advertising brand is trying to associate pleasure with smoking that brand. 13:3
Q. And Professor Stout, you would agree with me, would you not, that other consumer products also utilize advertisements which portray groups of young people having fun outdoors? 13:3
A. I would agree that they would tend to do so, yes. 13:3

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Q. Not that they would tend to do so. Would you agree that they do do so? 13:37
A. I'm sure, certainly, soft drinks use young people have -- enjoying themselves using the soft drinks. I think one of the differences is, though, the nature of the product. Soft drinks are not -- soft drinks are not regulated in the sense that people of certain ages are not supposed to be using the product. 13:37
Q. And you and I discussed that last time we were together that one of the only things that made cigarette advertising unique was the fact that it was regulated and it carries a warning and it's limited in terms of its placement and those types of things. Do you recall that testimony? 13:38
A. I recall that we spoke about that, yes. 13:38
Q. You also mentioned the Camel advertising and Joe Camel specifically. What will your testimony be with regard to Joe Camel? 13:38
A. Well, clearly Joe Camel has been an image that's been very prevalent in Camel campaigns since 1987 or the like, and that there are studies that have been done substantiating 13:38

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evidence about the recognition of that particular character or image in advertising by individuals that are outside of the legal age group for the product. 13:38

Q. And what studies are you referring to? 13:38

A. Again, to the Fischer study, and there are a couple of other studies as well that have looked at the nature of awareness of images in cigarette advertisements. 13:38 13:39

Q. Professor Stout, is it your understanding that Fischer and DiFranza's study of the Joe Camel trade logo measured recall of the logo or recognition of the logo? 13:39

A. I believe it was recognition. 13:39

Q. And is it your testimony that recognition of a trade character logo in any way equates to purchase intent? 13:39

A. Well, it certainly can be associated. I believe we talked earlier about how individuals can -- are exposed to messages and they can retain that information. And at the point where they are ready to enter the product category, they can use that information to make choices. 13:39

Q. And as we discussed when we were together a 13:39

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month ago, you testified that when someone is prepared to enter a product category and has made the decision to enter a product category, that advertising for cigarettes can assist them in selecting a brand of cigarettes. Do you recall that testimony? 13:39 13:40 13:40 13:40 13:40 13:40

A. I recall that we did talk about brands, and I believe -- that we did talk about brands, yes. 13:40 13:40 13:40

Q. Do you recall that testimony? 13:40

A. I would have to look at the very specific if you are asking about a very specific thing that I said -- 13:40 13:40 13:40

Q. Is that inconsistent with your opinion? 13:40

A. Well, I think that we had discussed the nature of brands -- brand purchase relative to category -- product category demand as well so that it would help people to select if they, in fact, were going to enter the category, as well as once they are within the category how they select brands. 13:40 13:40 13:40 13:40 13:40 13:40 13:40

Q. So is it your testimony that cigarette advertising causes people to enter the product category of cigarettes? 13:40 13:40 13:40

A. I think that cigarette advertising is 13:40

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certainly one component of -- that individuals use when they make decisions. 13:41

Q. When we were last together, we listed several factors which impact consumer decisions. And I will refresh your recollection because it's a very long list. Those factors included needs, socio environmental factors, background, need for cognition, income, lifestyle, personal experience, culture and subculture, ethnic background, religion, self-esteem, external versus internal locus of control, personality and impulse. Do you recall that? 13:41

MR. HOHN: Just for the record, are you reading from the deposition? If I could refer to that -- 13:41

MS. TYLER: I'm not. I'm referring to my notes. 13:42

MR. HOHN: Okay. Do you know where that is in the deposition so that I could look at that? 13:42

MS. TYLER: I don't.

Q. Do you recall that testimony, Professor Stout? 13:42

A. I recall that on a couple of occasions over 13:42

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those two days, that we talked about several lists. And I don't know if all of those things were encompassed in the list that we made without looking at the deposition. 13:42

Q. I'll represent to you that they are all in there. Are there any more that you can think of, as you sit here today? 13:42

A. Well, I think we were discussing consumer decision making and types of things that have impact on that. 13:42

Q. And all of those factors influence consumer decision making; is that correct? 13:42

A. I think we had been talking about how complex consumer decision making was and that there were numerous factors that had an impact on that and from this list as well as from advertising messages that people -- those were the types of things that influenced how people made decisions. 13:42

Q. So is it your testimony that cigarette advertising, marketing and promotion are one of the factors that influence consumer decision making about whether or not to enter the product category of cigarettes? 13:43

A. I think they could have an impact, yes, when 13:43

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people make that decision. 13:43
Q. Can you quantify the impact that you claim that cigarette advertising could have once someone has made the decision to enter the product category? 13:43
A. What do you mean by quantify? 13:43
Q. Well, you said they could have an impact and I'm trying to ascertain. You and I have discussed how complex consumer decision making is. And what I'm trying to ascertain is, are you able to quantify the level of impact that you claim marketer controlled stimuli, advertising, marketing and promotion, could have on the consumer decision of whether or not to purchase cigarettes? 13:44
A. Well, I think we discussed the complexity of the consumer decision making process and we had also talked about the role of the individual in that and that for any of these items in this list that we had talked about, that some of those will have more influence than others. And so it is not really -- I'm not really prepared to, for example, take that list and put a percentage by -- by each 13:44

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item in the list.
Q. So because consumer decision making is such an individual analysis, it's almost impossible to divvy up among the various factors their relative importance in the consumer decision making process?
A. Well, I think as I said, for individuals, different individuals will rely more upon some of those than others. Clearly with marketer controlled stimuli, as you are calling them, those are very prevalent. Billions of dollars are spent on advertising and marketing by cigarette advertisers annually, so those types of messages are -- there's a lot of clutter, there's a lot of those messages out there. And individuals get them not only from advertising, but also from promotions, from T-shirts they see their friends wearing, from key chains they get through promotions, et cetera, so...
Q. There is a tremendous amount of advertising clutter in America, is there not, Professor Stout?
A. There are a lot of dollars spent on advertising annually in the U.S., yes.

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Q. But don't -- aren't a lot of dollars spent annually on advertising in the U.S. because there's so much advertising out there and manufacturers of consumer products need to get their message and cut that message through all the clutter? 13:45

A. That's true. There tend to be. Obviously, as advertisers spend more dollars, it gives them the opportunity to have a larger share of voice so that for the products or brands in the product category that individuals are looking at, that they have more likelihood that their brand message will get through because they are spending more money than their competitors. So what usually happens is people keep spending more and more money, and that's why there's more clutter. 13:45 13:46

Q. But are you prepared, as you sit here today, to testify that because young people recognize, for example, the brand logo of Joe Camel, that that equates into for any child an intent to enter the product category and begin purchasing cigarettes? 13:46

A. I would say that at the point -- we are processing messages constantly, and at the 13:46

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point where it becomes salient that I would be likely to enter that product category, those messages that I have been exposed to would have some influence.

Q. You say when I'm at the point of entering that product category. What do you mean by that?

A. Well, typically, advertising helps to give us opportunities to satisfy needs that we might have, and certainly young people have needs to be -- to be accepted, to be part of a group. Some may have needs to feel like they're independent, not part of a group, and advertising works to associate the -- to help to satisfy the needs that individuals have by helping them to associate a brand with the need that they are trying to satisfy.

Q. A brand. So again, once they have entered the product category; is that correct?

A. That's correct, but they have to enter the product category at some point. And they would usually enter that -- they have to enter that point by buying a brand unless there's -- even generics.

Q. And that's interesting, Professor Stout,

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because not all people start smoking; isn't that correct? 13:48

A. That's correct. 13:48

Q. So you don't have to enter the product category of cigarettes. And, in fact, millions and millions of people don't ever enter the product category of cigarettes; isn't that correct? 13:48

A. That's correct. 13:48

Q. So for them cigarette advertising, I guess, was not a factor. Why not? Why do you maintain that they would not enter? 13:48

A. Well, advertising may play less of a role because their needs are different. And so they may -- for example, one could relieve stress by going and exercising or one could have a drink or one could smoke a cigarette. So people make different choices on how they will satisfy those needs. 13:48

Advertising messages are out there. Advertisers spend their money on advertising to make known to individuals what the attributes are of the brands that they have so that when a person has a need that needs to be met, they have options they can 13:48

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select.

Q. So the simple fact that many people never entered the cigarette product category is, again, testament to the complex and individualistic nature of the consumer decision making process; is that correct?

A. Well, I think for all product categories -- there are some product categories, obviously, that everyone -- everyone enters into, but there are many product categories that people don't, so...

Q. Now, you mentioned that at the time that an individual was prepared to enter a product category, that advertising might influence them and, again, as I understand it, it would influence them in selecting a brand. Is that your testimony?

A. Well, it could influence them to enter the product category in that they see that by using that particular product, they are going to be able to satisfy whatever need it is they have. So if they have a need, as young people might, to fit in with their peers, they could see that smoking cigarettes might allow them to do that.

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Q. Professor Stout, when you say influence them to enter a product category, and in this case influence them to smoke, are you -- you are not saying -- you are not equating influence with cause, are you, Professor Stout? 13:50
A. Well, how are you defining cause? 13:50
Q. A cause and effect relationship. Cigarette advertising causing people to begin smoking. Is it going to be your testimony at trial that cigarette advertising causes any individual in the State of Texas to begin smoking? 13:50
A. Well, I think, again, it depends on how you defined cause. Certainly, in social science where you are looking at 95 percent confidence levels that A is going to cause B, or let's say in drug testing where you want to make sure no one dies if the pharmaceutical that you put on the market fails, you certainly want to know that you have a very distinct cause and effect. 13:51
I think it's my understanding that certainly cause is defined differently outside of social science. My opinion would be that there's a -- in all likelihood that 13:51

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the messages that are delivered via advertising and promotion for cigarettes can influence individuals actually to -- in making a decision when they enter the product category. 13:51

Q. I'm sorry. Could you repeat the last part of your --

MS. TYLER: Or you could read it back. Could you read back the last part of her answer? 13:52

THE COURT REPORTER: Just the last, maybe, sentence?

(The requested portion of the (transcript was read back.

Q. Okay. Again, you say can influence, Professor Stout, and I want to be very clear that when I use the word cause, I mean that word in your lexicon as an expert in the field of advertising, marketing and promotion. And I am trying to ascertain whether or not you can say as an expert in this field that but for cigarette advertising, marketing and promotion, any individual in the State of Texas would not have started smoking. 13:52

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A. Well, I don't believe in the materials that I have reviewed I have found a study that has, in fact, had the degree of control that I believe you're requiring by your definition, which my assumption would be you would have groups of people who had never been exposed to cigarette advertising in their life and then looked longitudinally to see what kind of an impact that had on them at a point where they might begin smoking, which I think is 13, 14, 15 years old in our culture at least where we do have advertising.

So I am saying I have not seen an empirical study that is offering that degree of control, but I -- I'm not sure -- like I say, I haven't seen a study that offers that degree of control. I'm not sure we -- if that's what you require to show cause --

Q. I'm asking, and as I mentioned before, I'm defining cause in your field of expertise of advertising, marketing and promotion. And it sounds to me like you've just testified that you cannot say, as you sit here today, that but for cigarette advertising, marketing and promotion any individual in the State of

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Texas would not have started smoking.
A. What I would say is that I have not seen any studies of the nature that I think your definition demands that would be intensely controlled longitudinal studies that would control for all those other things but for advertising, marketing and promotions.
Q. So you have no evidence, as you sit here today, that would permit you to make the statement that but for cigarette advertising, marketing and promotion an individual in the State of Texas would not have started smoking.
A. Well, individuals in the State of Texas have been -- have been exposed to many things. We have got -- there's evidence that looks at the number of dollars that are spent relative to cigarette advertising. Obviously, there are studies that look at the recognition levels of logos. There are studies that look at initiation rates relative to expenditures on cigarette advertising. And so there are a number of different areas from which I would draw evidence that there is a relationship.
Q. A cause and effect relationship?

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A. Again, it depends on how you are defining cause. 13:55
Q. Well, why don't you define cause. 13:55
A. Well, in a social science -- by social science definition, you are looking at 95 percent confidence levels, meaning that you have a very strict -- a very strict level of confidence that, in fact, what you have found as your results, in fact, would occur again and again and again. 13:55
Q. And Professor Stout, do you have that confidence? 13:55

MR. HOHN: Now, you interrupted her though, so I'm going to ask that the witness be allowed finish the answer. 13:55

MS. TYLER: Ed, we've been through this, and you're not allowed to object.

MR. HOHN: I'm not objecting. I'm just saying you can't cut her off. You can't do that.

MS. TYLER: Why don't we -- why don't you read back her answer and we'll make sure that she was finished testifying.

(The requested portion of the transcript was read back.

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Q. Would you like to add to that sentence? 13:56
A. Well, I think what I would say is that I'm not certain that that's the definition that courts would use if, in fact, it is a social science definition that the courts use or not. 13:56
Q. Can you say as an expert in the field of advertising, marketing and promotion that if you moved the factor of cigarette advertising, marketing and promotion from the mix of influences on consumer decisions regarding cigarettes that individuals in the State of Texas would not have started smoking? 13:56
A. I would say that there is a relationship between the marketing advertising messages that individuals get and the rates of initiation so that there would be -- there would be a relationship. 13:57
Q. Professor Stout, is that relationship a cause and effect relationship? 13:57
A. In all likelihood, if you look at -- with all probability that one would occur with or without another, then I would say that that could be a cause and effect relationship. 13:57

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Q. So you are prepared, as you sit here today, to say that cigarette advertising causes people to initiate smoking? 13:57
A. I would say that I have seen evidence that suggests that there is a strong relationship between those two. 13:57
Q. I'm asking, as you sit here today, are you prepared to draw that connection, a cause and effect relationship between cigarette advertising and smoking initiation? 13:57
A. Based on the evidence that I have seen, I would say that yes, that there is. 13:57
Q. There is what? 13:57
A. There is a relationship, a cause and effect -- well, depending on how you're defining cause, but that in most likelihood, there is a relationship between the advertising, marketing, promotion and initiation. 13:58
Q. And that relationship is a cause and effect relationship? You are prepared to testify -- 13:58
A. That for -- 13:58
Q. -- to that effect? 13:58
A. That for some individuals, yes, that that would be a major influence in their 13:58

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initiation of smoking. 13:5
Q. Okay. I didn't ask about what was the major influence. I asked about a cause and effect relationship. And I want to make sure that we try to stay with the terms as we have defined them. 13:5
A. Right, but I think we need to go back to the issue of individuals again, and so this -- it's very difficult to make a blanket statement because we have talked about all those other issues as well. And consumer decision making is complex, and so I don't know that we can isolate that just one factor. 13:5
Q. Well, that's right. And Professor Stout, if you took out cigarette advertising and marketing and promotion from the mix of all of those other factors that can influence consumer decision making, can you say that a given consumer would not decide to begin smoking anyway? 13:5
A. Could you repeat the question? I'm sorry. 13:5
Q. If you take out cigarette advertising and marketing and promotion from the mix of all other factors that can influence consumer 13:5

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decision making, you cannot say that a given consumer would not decide to begin smoking anyway, can you, Professor Stout? 13:59

A. I'm sure that some may decide to smoke. 13:59

Q. If we took it out? If we -- you are going to have to clarify your answer. 13:59

A. Well, your question was if it was taken out, and I'm saying that I'm sure some may smoke, even if they had not been exposed to any advertising messages. But the fact is that the bulk of the population is exposed to multiple messages and that there is evidence that I've reviewed that shows that there are relationships between exposure to these messages and recognition, exposure to these messages and initiation and other things. 14:00

Q. Are you familiar with -- well, let me back up a second. Based on the articles that you have read, and I want to be sure that we're very clear about this, are you prepared to testify at trial that cigarette advertising, marketing and promotion causes individuals who are nonsmokers to begin smoking? Is that going to be your testimony at trial? 14:00

A. Again, looking at cause is that there is a -- 14:00

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a probability, and it's most likely that with the relationship of advertising, promotion and marketing and initiation, I would be prepared, yes, to say that. 14:00 14:01 14:01 14:01

Q. Would you feel comfortable expressing that opinion before your professional colleagues at an academic conference? 14:01 14:01 14:01

A. I don't believe I would, no. 14:01

Q. You would not feel comfortable? 14:01

A. No, I don't believe I would feel uncomfortable expressing that. 14:01 14:01

Q. Would you feel comfortable expressing that opinion in a peer reviewed paper? 14:01 14:01

A. It would depend on what the nature of the paper was. 14:01 14:01

Q. Well, let's say the paper was about the cause and effect relationship in your mind between cigarette smoking -- cigarette advertising, marketing and promotion and smoking initiation. 14:01 14:01 14:01 14:01 14:01

A. I -- certainly with the materials that I have reviewed, there is a preponderance of evidence which supports that conclusion. So reviewing that in a paper, I could express that conclusion. 14:01 14:01 14:01 14:01 14:01

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Q. Would you feel comfortable expressing that conclusion? 14:01
A. I believe I would, yes. 14:01
Q. Do you think that opinion would be defensible before a dissertation committee in your discipline? 14:02
A. Well, I think it depends on what the -- it depends on a number of things, obviously. But certainly I think it would be. 14:02
Q. Do you think Gary Wilcox would agree with that opinion, the opinion that you have just expressed? 14:02
A. I'm not certain what Gary Wilcox would agree with or not. 14:02
Q. Do you think Isabella Cunningham would agree with that opinion? 14:02
A. I do not know what her opinion would be or agreement would be with that. 14:02
Q. Professor Stout, did you review foreign ad ban studies in the course of your research for this case? 14:02
A. I briefly perused some articles, yes. 14:03
Q. And are you aware that those studies reflect that smoking rates remain stable in states where advertising bans on cigarette products 14:03

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were enacted?
A. I would have to look at the particular study that you're referring to.
Q. You are not familiar that several of those studies come to that conclusion?
A. Well, you are stating a specific conclusion. I'd feel more comfortable seeing what you're referring to.
Q. Well, as you recall, your review -- and you understand we have three hours today, so I'm not going to be able to pull out every study and let you read it because we're just real short on time, but as you sit here today recalling, thinking back about the articles you reviewed regarding foreign ad bans, what do you recall the conclusions of those studies as being?
A. I'd prefer to see the particular studies. Obviously, not all studies report the same results. So if you have a specific one, I would be happy to look at it.
Q. So as you sit here today, you can't recall what the conclusions were; is that correct?
A. I'd prefer not to make a blanket conclusion without having the particular studies in

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front of me that you are referring to is all. 14:04
Q. So you don't feel comfortable enough to discuss your recollection of any of the foreign ad ban studies; is that correct? 14:04
A. I would just like to see the studies is all. 14:04
Q. Just getting quickly back to the imagery and themes in cigarette advertisements, you mentioned Marlboro and you mentioned that that brand used western imagery; is that correct? 14:04
A. That's correct. It uses images of the west and landscape, yes. 14:04
Q. And there are many other consumer products, are there not, Professor Scout, that employ exactly the same western imagery? 14:04
A. Well, maybe not exactly the same, but there are other products that do employ that type of imagery. 14:04
Q. Boots, cowboys, western scenes, those types of things? 14:04
A. That's true, yes. 14:04
Q. You seem to distinguish in Subparagraph D between consumers of cigarettes and the general public. How do you distinguish between these two groups, in your opinions? 14:05

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A. Well, one distinction is that consumers are users of the product category and the general public might not be, so... 14:05
Q. Well, you use them in the same sentence, so are you distinguishing between consumers and the general public or not, in terms of the impact of imagery and themes? 14:05
A. Yes, I would distinguish between the two. 14:05
Q. And how would you distinguish between the two? 14:05
A. Well, clearly consumers have a different relationship with a product because they are part of the product category, and so individuals process information differently. And if a person is not -- has no need for the product or is not in the product category, then they process information about that product or brand differently. 14:05 14:06 14:06 14:06
Q. Differently how? 14:06
A. Well, we discussed involvement, I believe, on our previous meetings, and individuals would tend to be more involved with a product that they actually used than one that they don't use. 14:06 14:06 14:06 14:06
Q. So they are more likely to attend to 14:06

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advertisements for products that they use as opposed to advertisements for products they don't use? 14:06

A. They are more likely to, yes. 14:06

Q. Can you identify for me when you have studied the impact of tobacco advertising, marketing and promotion on consumers of cigarette products? 14:07

A. I have reviewed materials, and in my background, expertise in my teaching, this has been a topic. I think we discussed this previously as well. 14:07

Q. So you have reviewed secondary sources; is that correct? 14:07

A. I have, that's true, yes. 14:07

Q. Anything else? 14:07

A. I have looked at, as I said, hundreds of ads. 14:07

Q. But you have done no primary research, no study of your own, apart from looking at ads? 14:08

A. I have not studied consumers and exposed them to ads as primary research, no. 14:08

Q. Would your answer be the same with regard to your study of consumers' reactions to tobacco advertising? 14:08

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A. I'm sorry. My answer? 14:08
Q. Would your answer be the same with respect to your study of consumers' reactions to tobacco advertising? 14:08
A. The question being, have I conducted primary research using consumers? 14:08
Q. Correct. 14:08
A. No, I have not conducted primary research. 14:08
Q. You also mention in Subparagraph D the use of cartoon-like characters. And I think we established back in August that although you have written one paper about the use of endorsers in print advertising, you omitted cartoon characters from that study; isn't that correct? 14:08
A. That's correct, in that particular study we referred to previously. 14:08
Q. And, in fact, in that article -- and I'll be happy to get it for you, but just to speed things up -- you say on Page 538, "Despite frequent uses of endorsers in advertising, there is little published evidence regarding their effectiveness." Do you agree with that statement? 14:08
A. I would have to see. Do we have the 14:09

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article? 14:09
Q. Yes. 14:09
MS. TYLER: It's the only copy I have. 14:09
MR. HOHN: That's fine. If you'd just refer to what it is and let me have an idea of what we're looking at. 14:09
Q. Certainly. It's the article that Professor Stout coauthored with Dr. Moon, which appeared in the Journalism Quarterly. And so it's previously been marked as Stout Exhibit -- if you'll look on the front, Professor -- 14:09
A. Is that 3?
Q. 3. And I'm looking on Page 538. 14:09
A. Right. I'm looking for what you read. 14:09
Q. Let me see if I can find it for you. Right here (indicating). 14:10
A. Right. That is, as you said, "Despite frequent use of endorsers in advertising, there is little published evidence regarding their effectiveness." 14:10
Q. You wrote that, correct? 14:10
A. Right, at the time that we wrote this in 1980 something. 14:10

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Q. Do you agree with that statement? 14:1
A. At the time there was -- there was little published evidence. 14:1
Q. Is it your contention that there is more published evidence now? 14:1
A. That would be my contention, yes. 14:1
Q. And are you again referring to the Fischer and DiFranza studies? 14:1
A. Well, there has been a lot more work that's been done using endorsers. There has been more work in that area. 14:1
Q. Are you including Fischer and DiFranza in that group? 14:1
A. They would be in part I think, but we were looking at endorsers here and I think there was even less research available at that time on endorsers that would have been cartoon characters or animated characters of some sort. 14:1
Q. You testified that much more has been written on this topic. You have not written any of that work; is that correct? 14:1
A. I have not directly written any of that, no. 14:1
Q. You go on to say in Subparagraph D that, quote, "The use of cartoon-like characters 14:1

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and nonverbal messages that convey images of cool or, quote, independence are attractive to underage individuals." What will your testimony be with regard to that statement? 14:11

A. Well, in the evidence that I have perused and including some of the research that has been published since this article that we just referred to was published, there's been a great deal of interest in images and how people use images when they are processing information. And so based on those studies that I have looked at, there is evidence to support that, in fact, people do associate -- characters can be used to associate attributes. 14:12

Q. Isn't it also possible, Professor Stout, that individuals can use images as reminders which are negative in terms of the product category? 14:12

A. What do you mean by negative? 14:12

Q. Well, for example, did you review an article by a Professor Lucy Henke? 14:13

A. I did, yes. 14:13

Q. With regard to brand logo recognition of Joe Camel? 14:13

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A. I reviewed that article. 14:13
Q. And could you restate her conclusion for me, as best you recall it? 14:13
A. Well, I believe her conclusion was similar to Fischer's, that there was very high recognition rate of the logo, but based on one question that she had asked, relative to the individual's attitudes towards smoking, that they had a negative attitude toward smoking. 14:13
Q. And as a matter of fact, Professor Stout, Lucy Henke asked a question, a further question that Fischer and DiFranza did not ask in their study, and that was exactly that whether or not these children had any intent to purchase cigarettes or if they liked cigarettes, and also she asked to whom cigarettes -- who cigarettes were for. Were they for adults, were they for children, those types of things. She asked further questions beyond the scope of the Fischer and DiFranza study; isn't that correct? 14:14
A. She did ask, and I would have to see the article. And I would like to qualify a bit of what you said. 14:14

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Q. Certainly.
A. I believe the question she asked was an attitude about smoking, whether they liked smoking. I don't believe she asked a question about their intent to start smoking. So her question was about the behavior of smoking.
Q. She asked about cigarettes, didn't she?
A. I would have to see the article, but my recollection why I'm saying this is that I don't recall that she asked an intention question of them like do you intend to smoke. She did ask what they -- whether they liked smoking, what they thought of smoking as an act.
Q. And do you recall that overwhelmingly the children studied responded very negatively to cigarettes and smoking?
A. I recall that they said that they didn't like smoking, that they found it unpleasant. Obviously, they mean somebody else's smoking, not their own, because they were too young to smoke.
Q. Do you recall that the children in that study -- many of the children in that study

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identified cigarettes as a product for nobody? 14:15

A. I would have to see that. I don't recall. 14:15

Q. Apart from the articles that you have mentioned, the Fischer and DiFranza studies, what is the basis for your opinion that characters in nonverbal messages convey these images of cool or independence that you have described to underage individuals? 14:15

A. Well, in the evidence I've reviewed, there have been -- there have been things that I have seen that have lead me to come to that conclusion, to that opinion. 14:15

Q. What things? 14:15

A. Some of the internal documents that I have looked at have queried underage individuals and in those queries gotten those kinds of responses from the individuals. 14:16

Q. Can you identify any of the documents that you are referring to? 14:16

A. I can't specifically, no, but they are in the group of documents that have been released to you. 14:16

Q. So it's my understanding that you are basing your opinion on documents, internal company 14:16

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documents where they query children. And there are responses to those queries, and there are conclusions drawn on those queries; is that correct?

A. If my recollection is correct, some of those documents were surveys of underage children or underage users of the product.

Q. Do you recall that those surveys were scientific studies?

A. What do you mean by scientific?

Q. I mean scientific in terms of the rigors of your discipline.

A. Well, I don't recall which companies conducted the studies and based on that whether or not those companies, what their -- the levels of rigor are that they used in their -- with the product that they sell then to people like the cigarette companies that buy that service.

Q. It's possible they use no level of rigor at all, isn't it?

A. I don't know. It would be a poor choice for somebody to be spending their money for those if that were the case, but --

Q. Does that happen?

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A. I would not know. 14:17
Q. You have worked for an advertising agency, right? 14:17
A. I have, yes. 14:17
Q. Is it your opinion that all advertising, all research that is conducted in an advertising agency rises to the level of scientific rigor that you would approve of in your discipline? 14:17
A. Well, all research that is done outside of social science, for example, doesn't necessarily uphold those levels of rigor. So again, I'm not sure that those -- that those 95 percent confidence limits, for example, are attended to by those outside of the academy. 14:18
Q. So those outside the academy do not uphold the scientific rigors that those inside the academy uphold; is that your testimony? 14:18
A. Well, I can't say that as a blanket statement. 14:18
Q. But that's your understanding? 14:18
A. Well, I can't say that as a blanket statement. 14:18
Q. Let's move on to Subparagraph E. You state, "The role of affect and feelings in 14:18

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influencing consumer behavior, including operational strategies and tactics in advertising and promotions and their effects on audience experiences. Message exposure can lead to attraction to an advertisement, and that feeling can transfer to the brand which is advertised. 14:18

"Based on one communication theory, the mere exposure effect, individuals may form positive affect or attitude toward" -- I'm sorry -- "affect or attitudes based on mere exposure and repeated exposure to the message. The pervasiveness of the tobacco industry's messages promoting cigarettes demonstrates the applicability of these theories in their sale and marketing of cigarettes." 14:18 14:19

Professor Stout, what will your testimony be with regard to the role of affect and feelings in influencing consumer behavior? 14:19

A. Well, the evidence that I have reviewed indicates, again, that messages are used that appeal to affect and feelings of individuals. The individuals process these 14:19

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messages and use this then when they make decisions. 14:19

Q. To what effect, Professor Stout? 14:19

A. I'm sorry, what do you mean by -- 14:19

Q. Well, when they -- there are messages used and they are processed, and I'm trying to ascertain what the effect of affect and feelings is -- 14:19 14:20 14:20

A. Well --

Q. -- in your opinion. 14:20

A. -- in the evidence I have reviewed, individuals have been exposed to messages and they recognize those characters and the like. There's also evidence that looks at the initiation of cigarette smoking relative to the use of messages. 14:20 14:20 14:20 14:20 14:20

Q. And again, are you referring to the Fischer and DiFranza studies? 14:20 14:20

A. That's part of it, but I reviewed many studies. 14:20 14:20

Q. Is that the sum and substance of your testimony with regard to the role of affect and feelings in influencing consumer behavior? 14:20 14:20 14:20 14:20

A. Well, clearly a great deal of money is spent 14:21

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on advertising by cigarette companies, and those message are pervasive. They appeal to needs that young people would have and they are -- the appeals are presented in an affective or more emotional way. And individuals as a result of their exposure to these messages then process these messages, they store them and they use this when they make their decisions. 14:2

Q. How do you know that, Professor Stout? Based on the literature you have reviewed? Based on the articles that you have reviewed? 14:2

A. Based -- yes, on the literature I have reviewed and on my knowledge and experience of advertising and how advertising works. 14:2

Q. What is unique about cigarette advertising that appeals to the needs of young people? 14:2

A. Well, I think it's the -- if we look at the product of cigarettes and smoking, clearly young people have needs to either strike out on their own and be independent. They have needs to be part of a group. Adolescence is an anxious time for young people, and the product, part of the promise of what is offered by smoking cigarettes helps to meet 14:2

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those needs.
Q. The promise. You say the promise. What do you mean by the promise?
A. Well, various brands, obviously, offer various promises about what their brand delivers. Newport is alive with pleasure. Young people are together in group settings having a wonderful time, and the implication is that that message with that brand is supposed to be associated with that brand relative to linking Newport as a brand with that particular image and that promise of pleasure. Other brands do similar, use their advertising in a similar way.
Q. Professor Stout, are you familiar with studies that state overwhelmingly that peer pressure and family influence are the two largest factors leading to smoking initiation?
A. I have seen some studies that look at those as part of the part and parcel of the list that we have reiterated today relative to impact on -- or influences on consumer decision making.
Q. Are you familiar with the studies that find

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that parental influence and peer pressure are overwhelmingly the most important factors in influencing children to begin smoking? 14:23

A. I'm not -- I'm not sure which specific studies you are referring to. Do you have those? 14:23

Q. You don't recall those studies? 14:23

A. I have seen a number of studies, and not all studies have reported the emphasis that I think of the studies that you are referring to, but I don't know which studies you are referring to, so... 14:24

Q. Well, for example, there was a study just recently published in the Journal of the American Medical Association which discusses the important role of family and family communication and family connectedness in adolescents engaging in certain high risk behaviors, including but not limited to smoking. Are you familiar with that study? 14:24

A. I don't believe I have seen that study. 14:24

Q. In this paragraph you use the word "tactics." What are you referring to when you use the word tactics in this paragraph? 14:24

A. Well, tactics as an advertising term refers 14:24

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to the actual execution or implementation of a strategy. 14:24

Q. So when you use the word tactics, you are using it in the sense of advertising for consumer products. 14:25

A. Well, as I said, it's a typical word that's used in advertising that refers to the way that you implement or execute your strategy. 14:25

Q. So there's nothing unique about the cigarette -- about the cigarette manufacturers using tactics versus manufacturers of other consumer products using tactics. It's just a word that's common to your discipline and that's why you used it? 14:25

A. That would be correct, yes, that that's typical in advertising. The advertiser ideally has an objective. They develop strategies and then they execute that through the tactics. 14:25

Q. Moving on to Subparagraph F, you wrote, "The application of marketing concepts to social marketing to promote change, including key concepts and strategic planning for effectiveness. Observations concerning the 14:25

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application of a mix of communication components to promote behavior change and the parallels with product for profit marketing." And Professor Stout, what will your testimony be with regard to change? I'm -- well, why don't you tell me what your testimony will be with regard to this paragraph. Let me start there. 14:25 14:25 14:26 14:26 14:26 14:26 14:26

A. Well, social marketing tends to focus on messages to promote change. Usually, oftentimes, these are in behaviors that are ongoing behaviors, and you are looking at developing a mode for prevention. And some of the literature that is available in the social marketing literature utilizes certain theories that one would apply if one were designing messages ideally to promote change or prevention, so if it's drinking and driving or if it's cigarette smoking, for example. 14:26 14:26 14:26 14:26 14:26 14:26 14:26 14:26 14:26 14:26

Q. What is the change you are referring to here? 14:26

A. Well, you're usually looking at promoting a change in attitudes and behaviors because most of these behaviors that social marketers target are behaviors that are dangerous or 14:27 14:27 14:27 14:27

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oftentimes fatal behaviors, like HIV, unsafe sex. And so you are looking to promote change in that way. 14:27

Q. In this paragraph what is the change that you are referring to? 14:27

A. Well, the change would -- could be in attitudes or it certainly could be in behaviors that individuals undertake. 14:27

Q. Can you be more specific with respect to your testimony at trial in this case regarding the change that you will be discussing? 14:27

A. Well, it would focus on prevention or cessation of cigarette smoking. 14:27

Q. And what will your testimony be with regard to cessation of cigarette smoking and campaigns to do that? 14:27

A. Well, in the evidence that I have looked at, the nature of prevention or cessation, especially prevention of that particular -- of cigarette smoking, if you look at the -- both the types of theories that are used as well as the nature of those types of campaigns, they -- you see that there are similarities in the executions of the types of theories that are used between social 14:28

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marketing and marketing, meaning for profit marketing and not for profit marketing or social change. 14:2

THE WITNESS: Could we take a break? 14:2

MS. TYLER: Sure.

THE VIDEOGRAPHER: Off the record at 2:28. 14:2

(RECESS) 14:3

THE VIDEOGRAPHER: We're back on the record at 2:37. 14:3

Q. Professor Stout, we're back on the record after a short break. Are you prepared to continue? 14:3

A. I am, yes. 14:3

Q. Professor Stout, are you going to come to Texarkana to testify in this case? 14:3

A. I believe I will. 14:3

Q. And when you testify in this case in Texarkana, do you intend to apply the rigors of social science that you use every day in your discipline? 14:3

A. Apply them to what? 14:3

Q. To your testimony, to your opinions. 14:3

A. I'm not certain what you mean. 14:3

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Q. Well, when you provide expert opinions to the court, will you be applying the rigors of your discipline of social science when you do so? 14:38

A. Well, I'll be reporting -- some of the articles that I have reviewed as evidence have adhered to those standards for publication purposes, and then I have reviewed numerous materials from other sources. 14:38 14:39

Q. But when you testify as a social scientist, you will be applying the rigors of your discipline because that's -- you are an expert in advertising, marketing and promotion, as I understand it. 14:39

A. Well, that's true, but I guess my understanding is relative to what the rigors of the court are, I suppose. Relative to how one defines -- defines that in law, that there are different definitions for these things in different domains. 14:39

Q. Is it your understanding, Professor Stout, that the rigors of law are less rigorous than the rigors of social science? 14:39

A. No, that wasn't what I meant to imply. My 14:39

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understanding is that there are different types of definitions that apply. Even as I said with social science versus hard science, if I were working for a pharmaceutical company, I would have a confidence limit that would be higher than the ones that are adhered to in social science because of the nature of the things that were being tested. 14:39 14:39 14:40 14:40 14:40 14:40 14:40

Q. As an expert in advertising, marketing and promotion, what level of confidence do you need to have as a social scientist when you reach conclusions regarding the effect of advertising, marketing and promotion? 14:40 14:40 14:40 14:40 14:40

A. I'm sorry. So what is the question again then? 14:40 14:40

MS. TYLER: Could you read it back?

(The requested portion of the (transcript was read back.

A. Well, I believe that in the evidence that I have reviewed that there has been a preponderance of evidence that shows that there is a relationship between advertising, marketing and promotional activities and certain outcomes. 14:40 14:40 14:41 14:41 14:41

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Q. When you are conducting research regarding a cause and effect relationship between advertising, marketing and promotion and behavior, is a preponderance of evidence enough as a social scientist? 14:41

A. It could be, yes. 14:41

Q. It could be, or it is? 14:41

A. It can be, yes. 14:41

Q. When can it be? 14:41

A. It can be in numerous instances. 14:41

Q. Well, before you were talking about your confidence intervals, and I'm trying to understand what type of confidence level as a social scientist you would feel comfortable. 14:41

A. Well, I think you are beginning to distinguish between opinions and what I would call empirical research. And so certainly in doing -- we just talked about that relative to empirical research in designing studies that have for -- if one is looking for cause and effect. Not all research that's done is looking at cause and effect. There are numerous types of research that are reported on in social science. 14:42

Q. What confidence level would you need with 14:42

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regard to empirical evidence of a cause and effect relationship in your discipline? 14:42

A. It would depend on the journal, and the most typical confidence levels that are used in some of our key journals are at the .05, or 95 percent confidence levels for articles that are published. 14:42

Q. But it's your opinion that when you are providing opinions, there is a lesser standard that applies? 14:42

A. No. It's my opinion that when one is conducting something other than an empirical study, that one is utilizing different means of doing that. So as I said, social science, for example, makes -- let's use history as an example. One makes -- hypothesizes about outcomes from history and does historical analyses but doesn't adhere to a 95 percent confidence level to do that. And yet we still see that there are relationships between why the Civil War was fought or things of that issue. 14:43

Q. Your point being? 14:43

A. My point being that depending on the type of research that's being done and the nature of 14:43

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the information as it's presented, that sometimes 95 percent confidence level is -- sometimes it's applied and sometimes it isn't. 14:43 14:43 14:43 14:43

Q. Professor Stout, is your expert disclosure the only document you have prepared which contains your opinions in this case, your expert opinions in this case? 14:44 14:44 14:44 14:44

A. The disclosure document? 14:44

Q. Yes, Stout Exhibit 6. 14:44

A. No, I believe I have also filed an affidavit. 14:44

Q. I'm showing -- 14:44

MS. TYLER: Sally, can we mark that Stout Exhibit -- I believe, it would be 11. It could be 10. 14:44 14:44

(Deposition Exhibit No. 10 (marked for identification 14:45

Q. I'm handing you Stout 10, which is a copy of an affidavit of Doctor Patricia Ann Stout. Do you recognize that document? 14:45 14:45 14:45

A. Yes, I do. 14:45

Q. Did you write that document, Professor Stout? 14:45

A. Yes, I did. 14:45

Q. I notice that much of the document appears in quotations. Do you know why that is? 14:45

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MR. HOHN: It's a requirement for Texas affidavit procedure. 14:45

MS. TYLER: I'm asking the witness. You're interrupting. I'm asking the witness. 14:45

MR. HOHN: I'm sorry. 14:45

A. Well, I would have assumed it had something to do with format. 14:45

Q. Did you put those quotation marks there? 14:46

A. I did not format the document, no. 14:46

Q. Why don't you explain to me the chronology of how this document came into existence. 14:46

A. Well, I was asked to prepare an affidavit that was based on my disclosure statement. 14:46

Q. You were asked to write a statement based on your disclosure statement. Is that your testimony? 14:46

A. Well, I was informed relative to an affidavit that was to be prepared from -- based on my disclosure statement. 14:46

Q. Did you write this document entirely by yourself, or did counsel for the State suggest some of the language contained in this affidavit? 14:46

A. Well, I was -- I wrote this in conjunction 14:46

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with counsel, yes. 14:46
Q. Can you explain to me how you wrote it in conjunction with counsel? 14:46
A. Well, there were phone conversations and, as I recall, e-mail exchanges as well. 14:47
Q. So there were prior drafts of this document? 14:47
A. It was -- it was a work in progress. 14:47
Q. Do you retain any of the drafts that you made of this document? 14:47
A. Not to my recollection, no. 14:47
Q. Did you type this document? 14:47
A. I did not prepare this exact document. This was prepared by counsel. 14:47
Q. If you look on the last page, is that your signature, Professor Stout? 14:47
A. Yes, it is. 14:47
Q. Can you tell me when you signed this affidavit? 14:47
A. Well, it looks like I would have signed it on the 8th of August. That's when it's notarized. 14:47
Q. Now, that's about a week before I obtained your expert disclosure in this case; is that correct? 14:47
A. I can't recall the date about the expert 14:47

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disclosure.
Q. Well, I obtained your expert disclose on August 14. So is it correct that you executed this document approximately one week before I obtained your expert disclosure in this case?
A. Well, that doesn't strike me as the chronology of events.
Q. Well, you just testified it was subscribed and sworn before a notary public on this 8th day of August, 1997, correct?
A. That's what it says here, yes.
Q. And I have previously marked as Stout Exhibit Number 5 a letter to me from a Jeffrey Angelovich dated August 14 enclosing your expert disclosure. So isn't it correct that you executed this affidavit approximately one week before I obtained you expert disclosure?
A. Well, it would appear that way, but I'm wondering if it incorrectly has August instead of September on it because the chronology was not that way. The affidavit was prepared after the disclosure statement had been prepared.
Q. Well, it's signed and notarized as having

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been done on August 8, 1997, and you have a notary public signature there and a notary public stamp. Are you saying that you don't think you executed it on August 8? 14:49

A. I question that now because of the chronology. 14:49

Q. Well, I can represent to you that it was faxed from Nix & Associates, as reflected on the header of the document on September 7th. So do you think it was faxed to defense counsel before you executed it under oath? 14:49

A. I don't know. All I know is that the chronology was that I prepared the disclosure statement before I prepared the affidavit and had that notarized. I had that notarized by someone at my office. 14:50

Q. So although you had this document -- you signed this document under penalty of perjury and you had it notarized. As you sit here today, you question the date of the notarization; is that correct? 14:50

A. I guess I would want to see the notary's booklet, actually. 14:50

Q. And when is it your testimony that you did have this notarized, if the official court 14:50

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officer did it incorrectly as you now claim? 14:50
A. The official court officer? 14:50
Q. The notary public is an officer of the court. 14:50
A. Well, all I can recall is that I know that I did the disclosure before the affidavit, and so if you received the disclosure on the 14th, I would not have done the affidavit on the 8th. So my best guess is that the month is written in incorrectly and -- 14:51
MS. TYLER: Excuse me one second. 14:51
Q. I'm going to show you another copy of your expert disclosure. And I will represent to you that in this copy I have highlighted all the language that is contained in both your affidavit and your expert disclosure. The language that is not highlighted is unique to your affidavit and is not contained in your expert disclosure. I would like to direct your attention to Page 3 of your affidavit where you describe some of your opinions regarding cigarette advertising, marketing and promotion. Are you on Page 3? 14:51
A. I am, yes. 14:51
Q. Would you agree with me that approximately 14:51

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half of that page is not highlighted, indicating that it is different from your expert disclosure? 14:51

A. That's true. 14:52

Q. I would like to read for you from Paragraph C of your affidavit for just a moment. And I will represent to you as reflected in my highlighted copy that the first half of that paragraph tracks Subparagraph C of your expert disclosure. And I would like to read to you the language that was not contained in your expert disclosure on the issue of the strategic use of integrated marketing communication. "Based upon a reasonable degree of marketing, advertising and promotion probabilities, these activities have had significance, influence and impact on nonsmokers, both adolescents and adults, to initiate smoking, continue the smoking habit and have created deceptive, misrepresented health images and enjoyment surrounding the use of tobacco products without truthfully informing the consuming public on the adverse health effects involved with cigarette smoking." Did I accurately 14:52 14:52 14:52 14:52 14:52 14:52 14:52 14:52 14:52 14:52 14:52 14:52 14:52 14:52 14:52 14:53 14:53

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read that paragraph?
A. Yes, you did. 14:53
Q. Is what I just read to you a personal opinion, as distinguished from your professional opinion? 14:53
A. I believe that the affidavit represents my professional opinion. 14:53
Q. Did you not disclose the latter half of the opinion that I just -- of the paragraph that I just read in your expert disclosure because you do not intend to offer that opinion at trial? 14:53
A. I believe that I have reviewed considerable more documents and materials, and my opinion has been, as I say -- as I review more materials, my opinion becomes more certainly clear relative to some of the aspects of marketing, advertising and promotion relative to smoking. 14:54
Q. Is it your testimony that you did not disclose the latter half of that paragraph? And I will state to you for the record, most of the other paragraphs contained in this affidavit, that you did not disclose those in your expert disclosure because you did 14:54

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additional work from the time of the execution of your expert disclosure? 14:54

A. Well, clearly I've been working all along, but certainly the -- I think the opinions are the same. 14:54

Q. You think the opinions are the same between your expert disclosure and your affidavit, Professor Stout? 14:54

A. Well, that my opinions are the same, based on -- it's just that they are stated differently, I think, in the affidavit than in the -- 14:54

Q. Well, I will represent to you, and you can take time to look at it, but I will represent to you that there is absolutely no discussion in your expert disclosure as we have discussed it for two days in August and an hour or so this morning, there's no discussion in your expert disclosure about activities of the tobacco industry having had significance, influence and impact on nonsmokers, both adolescents and adults, to initiate smoking or continue the smoking habit. That opinion is not expressed anywhere in your expert disclosure, is it, 14:54 14:55

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Professor Stout?
A. Well, it certainly is not written the same, but my --
Q. Is it written anywhere in your expert disclosure?
A. There are -- there is more text included in the affidavit than there is in the expert disclosure.
Q. Can you point to me where in your expert disclosure you discuss a reasonable degree of marketing, advertising and promotional probabilities that cigarette -- cigarette manufacturing activities have had significant influence and impact on nonsmokers, both adolescents and adults, to initiate and continue the smoking habit? Can you find that for me in your expert disclosure, please?
A. As you have highlighted it here, you have indicated that it is not contained in the expert disclosure.
Q. And can you point out for me in your expert disclosure where you discuss that cigarette manufacturing activities have created deceptive misrepresented health images and

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enjoyment surrounding the use of tobacco products without truthfully informing the consuming public on the adverse health effects involved with cigarette smoking?

A. Well, although those words are not contained in the expert disclosure, that is part and parcel of my -- of my disclosure.

Q. Where do you think in your expert disclosure do you state those opinions, in those words or any other words?

A. Well, clearly in highlighting how the marketing and promotion of -- and advertising of cigarettes has had an impact. So I have referred to the difference in -- the different target groups, adolescents and adults, et cetera. And so whereas the words are different, my opinions aren't different.

Q. Professor Stout, would you please point to me where in your expert disclosure you discuss the impact of cigarette advertising, marketing and promotion on nonsmokers, both adults and adolescents, to initiate smoking and nonsmokers to continue smoking?

A. Well, as you have indicated these exact words --

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Q. I'm not looking for the exact words. I'm looking for anything that indicates that opinion in your expert disclosure, and I'd like you to identify it for me and read it to me. 14:57

A. All right. One example would be under Subparagraph B in the expert disclosure where I refer to the promotion of cigarettes at family-oriented events and also refer that cigarette manufacturers have used promotions targeted to specific consumer segments, including but not limited to Hispanics, African-Americans and teenagers. The promotion tactics employed by the cigarette manufacturers are frequently of the sort attractive to young people. 14:57

Q. Professor Stout, I'm going to stop you for one moment because what you are identifying for me are your statements regarding alleged cigarette manufacturer advertising activities. And I want you to direct me to where in your expert disclosure you discuss the impact, influence alleged from those activities. 14:58

A. Well, as I said, I have not used the exact 14:58

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language that's in the affidavit in the disclosure. 14:58

Q. Do you use the word "impact" anywhere in your expert disclosure? 14:58

A. I would need to read it from top to bottom. 14:58

Q. Do you recall using that word? 14:58

A. I would have to read it in its entirety. 14:58

Q. Is it your opinion that your affidavit as reflected in Stout Exhibit 10 and your expert disclosure as reflected in Stout Exhibit 6 reflect the same opinions? 14:58

A. I feel they do, yes. 14:59

Q. Have you done additional work since the time of the finalization of your expert disclosure which led you to add that language to your affidavit? 14:59

A. Well, as I said earlier, I continue to do work in the area, so I'm continuing to look at additional studies and documents and the like in advertising, yes. 14:59

Q. Well, Professor Stout, why did you choose to use that language, the additional language in your affidavit, and you did not choose to use it in your expert disclosure. 14:59

A. Well, I think certainly, as I've reviewed 14:59

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more things, I have come upon more evidence that makes it much clearer that the relationship is there. 14:59

Q. So you have come across more evidence since you finalized your expert disclosure that leads you to feel comfortable to articulate the additional opinions contained in your affidavit; is that correct? 15:00

A. I have been continuing to review things, yes. 15:00

Q. But that wasn't my question. 15:00

MS. TYLER: Sally, can you read back my question? 15:00

(The requested portion of the (transcript was read back.

A. And yes, I have been continuing to look at additional evidence. 15:00

Q. Has that -- is that additional evidence wnat has made you feel comfortable articulating additional opinions in your affidavit? 15:00

A. I would say that yes, I have been reviewing things that have led me to use those additional words, yes. 15:00

Q. And I would like for you to identify for me what those materials are. 15:01

A. Well, I have looked at a number more ads. I 15:01

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also have been looking at documents and published articles that indicate relationships between advertising and initiation, as I've said, statistics relative to underage use and initiation of cigarettes. I have also been reviewing documents relative to the -- some of the promotions that are disseminated by the cigarette companies relative to stopping smoking that are intended to reach youth to -- to talk with them about taking up cigarette smoking. So I have been continuing to review a number of things.

Q. Where did you obtain these additional materials, Professor Stout?

A. I have been continuing to obtain materials, and I've also obtained some materials from counsel.

Q. So you're continuing your independent research?

A. I am, yes.

Q. Have all of the articles, advertisements, statistics, documents that you have reviewed since you finalized your expert disclosure and were deposed by me on August 21 and 22,

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1997 been disclosed to me? 15:02
A. I'm not certain if they have or not. 15:02
Q. Have you disclosed them to plaintiff's counsel? 15:02
A. I have disclosed some of them, yes. 15:02
Q. You have disclosed some of them. Can you quantify how much material you are talking about? 15:03
A. In inches? 15:03
Q. Let's talk about the ads. Can you quantify the number of ads you reviewed since you finalized your expert disclosure and were deposed be me? 15:03
A. I would say I have reviewed several hundred, maybe 300. 15:03
Q. Several hundred, maybe 300 since your expert disclosure in your deposition? 15:03
A. Yes. 15:03
Q. Have you disclosed those advertisements to counsel for the State of Texas? 15:03
A. I believe I have some. 15:03
Q. How about articles? How many more articles have you reviewed? 15:03
A. I have probably reviewed another, I don't know, 20, 30 or more. 15:03

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Q. Have you told counsel for the State of Texas what those articles are? 15:04
A. I believe I have some, yes. 15:04
Q. You believe you have told them about some? 15:04
A. Right. I have been continuing to review and to read things, and I assume I will do that up until the court date. 15:04
Q. Do you also understand that you have an obligation to disclose those materials to me so that I can fully understand the support that you claim you have for your opinions? 15:04
A. So as I continue, then everything that I look at -- 15:04
Q. Anything you base your opinions on, yes, ma'am. 15:04
A. (Witness nods). 15:04
Q. What about statistical studies? 15:04
A. Well, many of these published pieces offer statistics. And as I said, I have also seen some more internal documents that have been sent to me by counsel. 15:04
MS. TYLER: Well, at this time I object on the record to the fact that Professor Stout has done additional research which has led to additional opinions which 15:05

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have not been disclosed to defense counsel. I think that prejudices our ability to engage in discovery in this case, and I am extremely disappointed. And we will conclude today after three hours, but it will be my position that this deposition is not fully concluded until all of those documents have been disclosed to me, and I'm quite certain that they have not.

MR. HOHN: Do you want me to respond now or later?

MS. TYLER: You can respond any time you want, but we might as well not take up time on the record.

Q. Professor Stout, can you direct me to where in your expert disclosure you state the words "falsity" or "deception" with respect to industry cigarette advertisements?

A. In my expert disclosure?

Q. Yes.

A. I don't believe I use those words per se in my expert disclosure.

Q. And why did you use those in your affidavit when you did not use those words in your expert disclosure?

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A. Well, as I said, I've reviewed additional materials and it's become even more clear to me the nature of the impact of the marketing advertising and promotions.

Q. What have you reviewed that makes you feel comfortable drawing that conclusion now, when you did not when you filed your expert disclosure?

A. Well, as I said, I reviewed many more articles. I have also looked at hundreds more ads and some internal documents as well.

Q. And which of those categories of documents led you to the conclusion that there was falsity or deception in industry advertisements?

A. Well, I couldn't point out one per se. I think in total the aggregate allows me to be able to make that statement.

Q. So you have reviewed additional advertisements, additional articles and additional internal company documents which as of September 8, I guess it is, according to your testimony, you feel comfortable drawing the conclusion that there was falsity or deception in cigarette advertisements; is

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that correct?
A. That's correct. 15:07
Q. You testified that there was falsity or deception in cigarette advertisements. What do you mean? 15:08
A. Well, that the messages essentially make -- allow individuals to make interpretations that are incorrect. 15:08
Q. About? 15:08
A. About the -- about cigarette smoking, not only the physical act of the cigarette smoking, but as well the more serious health implications. 15:09
Q. You state that those advertisements allow individuals to make interpretations that are incorrect, Professor Stout. Do you know that individuals do make interpretations of those cigarette advertisements that are incorrect? 15:09
A. Well, one assumes they do because as I say, even in the youth market, 90 percent of individuals begin smoking by age 17, I believe it is, so... 15:09
Q. And is it your testimony, Professor Stout, that 90 percent of underage individuals begin to smoke because they make interpretations 15:09

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regarding cigarette advertisements that are incorrect? 15:09

A. That would certainly be part of it. 15:09

Q. What is the rest of it? 15:09

A. Well, we had talked about the list of -- in consumer decision making that there -- that list that we've talked about earlier today, relative to other influences. 15:09

Q. So is it your testimony that adolescents when they see cigarette advertisements think that cigarette smoking is healthy for them? 15:09

A. The cigarette advertising certainly does make that type of a message. 15:10

Q. Well, I understand that's your opinion that it makes that type of a message, but my question to you is, is it your testimony that adolescents see cigarette advertisements and believe that cigarettes and cigarette smoking are healthy? 15:10

A. They take it up at a very high rate, so they do begin smoking. 15:10

Q. I'm sorry. I don't understand. Is it your testimony that adolescents see cigarette advertising and conclude that cigarettes and cigarette smoking is a healthy activity? 15:10

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A. I would say that they could do that, yes. 15:10
Q. I didn't ask you if they could do it. I asked you if they do do it. 15:10
A. And I'd say clearly that a large proportion of the underage market begins smoking. 15:10
Q. So that is your evidence? 15:11
A. That is part of the evidence. 15:11
Q. So your evidence that adolescents see cigarette advertising falsely and interpret those advertisements as signs of health is based on the fact that adolescents smoke? 15:11
A. That is part of it because there is a high initiation rate, yes. 15:11
Q. What is the rest of it? You say that's part of it. What is the rest of it? 15:11
A. Well, it's a complex decision, so I can't make a blanket decision about every young person under legal age that begins smoking. 15:11
Q. It is an individual decision, and it is a complex decision. As you sit here today, can you say that for any individual, for any adolescent, that they see cigarette advertising and they interpret the message from that advertising that cigarette and cigarette smoking is a healthy activity? 15:11

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A. I would say that individuals do, yes.
Q. Can you say that for any one individual?
A. I can't name a person, if that's what you are asking.
Q. Can you say that definitely for any one individual, Professor Stout, as you sit here today?
A. I would say, yes, that there are people like that in the population, yes.
Q. And how did you go about identifying them?
A. Well, as I said, I couldn't name names.
Q. Can you identify a percentage of adolescents that so perceive cigarette advertising?
A. Well, there's a very high proportion of individuals that take up smoking at -- underage.
Q. Are you prepared to draw a one-to-one relationship between those two figures?
A. I believe that we said that it was a complex decision.
Q. Well, that's what I'm trying to understand. And as you sit here today, can you quantify any population that sees cigarette advertising as -- that as you sit here today, can you quantify any population that

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perceives cigarette advertising as portraying cigarettes and cigarette smoking as a healthful activity? 15:12 15:13 15:13

A. Well, clearly some segments of the population, like young girls, for example, are initiating smoking at a higher rate, and they also smoke longer and have more difficult time in quitting smoking as well. 15:13 15:13 15:13 15:13 15:13

Q. But again, you are speaking about young girls as a group? 15:13 15:13

A. I am, yes. 15:13

Q. So you are making a blanket statement, and that is where you are losing me. 15:13 15:13

A. Well, I assume you are asking me if I could bring into this room right now a number of individuals for which the statement would hold. Is that what you are asking me? 15:13 15:13 15:13 15:13

Q. I'm asking if you are able to identify any individual or any group of individuals that see cigarette advertising as portraying cigarettes and cigarette smoking as a healthful activity. 15:13 15:13 15:13 15:13 15:13

A. Certainly, I have seen documents that show that individuals do not see it as an unhealthy activity, and also there is 15:13 15:13 15:14

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evidence in some of these documents relative to identifying it as cool, et cetera. 15:14

Q. But as you sit here today, you can't identify those individuals because consumer decision making is complex and individualistic and impacted by a variety of factors; isn't that correct? 15:14

A. Well, I cannot identify a select group of individuals that I can bring into this room, that's true. 15:14

Q. Can you identify a select group of Medicaid recipients? 15:14

A. I don't have a list. I don't have a roster of that. I believe that's -- I don't have access to those medical records. 15:14

Q. Have you done any study of the alleged impact or influence of cigarette advertising on the Medicaid population in the State of Texas? 15:14

A. Meaning, have I conducted primary research on that population? 15:14

Q. Have you conducted primary research? Have you reviewed secondary sources? 15:15

A. I have not looked at that particular area per se. I have tended to confine my observations to advertising, marketing and promotions for 15:15

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this. That's the area of my expertise, not Medicaid. 15:15

Q. I'm sorry? 15:15

A. I say the area of my expertise is advertising, promotions and marketing, not Medicaid. 15:15

Q. So you have not conducted any research, primary or otherwise, with regard to the impact of -- the alleged impact of cigarette advertising, marketing and promotion on the Medicaid population in Texas; is that correct? 15:15

A. I have not conducted any primary research about the Medicaid population. 15:15

Q. Have you reviewed any research regarding the Medicaid population of Texas and any alleged impact of cigarette advertising, marketing or promotion on that population? 15:15

A. I can't recall any specific article. I can't say that I haven't, but I can't recall any specific articles, no. 15:15

Q. So as you sit here today, you cannot recall reviewing a single article regarding the alleged impact of cigarette advertising, marketing or promotion on the Medicaid 15:15

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population of Texas; is that correct? 15:16
A. I can't recall that I have seen anything, 15:16
no. 15:16
MS. TYLER: Why don't we take a 15:16
break. 15:16
THE VIDEOGRAPHER: Off the record 15:16
at 3:16. 15:16
(RECESS) 15:16
THE VIDEOGRAPHER: This is the 15:23
beginning of Tape 2. On the record at 3:23. 15:23
Q. Professor Stout, we're back on the record 15:23
after a short break. Are you prepared to go 15:23
forward? 15:23
A. I am, yes. 15:23
Q. Professor Stout, are you going to tell the 15:23
jury at trial in this case that in your 15:23
expert opinion, cigarette advertising, 15:23
marketing and promotion by itself has ever 15:23
caused anyone to start smoking in the State 15:24
of Texas?
A. Any one individual? 15:24
Q. Yes. 15:24
A. I believe that there's a propensity of 15:24
evidence that it could have, yes. 15:24
Q. Is it going to be your testimony that it has 15:24

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caused anyone in the State of Texas to start smoking? 15:24

A. I would say that it -- it could. It would be -- it could, yes. 15:24

Q. Are you going to tell the jury at trial that in your expert opinion, cigarette advertising, marketing and promotion by itself has ever caused any nonsmoking adult to start smoking in the State of Texas? 15:24

A. It certainly could have an influence on doing that, yes. 15:24

Q. Are you going to testify that it caused any nonsmoking adult in the State of Texas to start smoking by itself? 15:25

A. And by cause, how are you defining cause? 15:25

Q. Cause and effect. 15:25

A. That there is a propensity then that it's likely that it could, yes. 15:25

Q. So it doesn't cause it. There's a propensity that it's likely to have an effect, but that's not cause? 15:25

A. If cause is that the evidence overwhelmingly suggests that there's that relationship, then yes. 15:25

Q. The evidence over -- it is going to be your 15:25

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testimony at trial that the evidence overwhelmingly suggests that cigarette advertising, marketing and promotion by itself causes individuals in the State of Texas to start smoking. Is that your testimony?

A. With the definition of cause being that there is a likelihood of propensity that the relationship of the advertising, marketing and promotions has an impact on people starting smoking or on initiation, yes, I would.

Q. Well, I don't think that the definition of cause does mean a propensity or likelihood that it could have an influence. I'm talking about cause in the terms of the rigors of your scientific discipline, and I want to know whether or not you plan to tell the judge and the jury in Texarkana, Texas that in your expert opinion, cigarette advertising, marketing or promotion by itself has caused any nonsmoking adult to start smoking in the State of Texas. Do you plan to render that opinion at trial?

A. It's my understanding that there are

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different definitions for cause in the legal arena than there are in social science.
Q. Well, at the moment I want you --
A. Could you explain to me -- I'm sorry to interrupt, but...
Q. For the moment, I would like you to put out of your mind whatever legal definition of cause you think applies here. I'm asking about your definition of cause in your discipline as an expert in cigarette advertising, marketing and promotion. Okay? That's the definition of cause and effect, a cause and effect relationship here in your discipline. And my question to you is, are you going to tell the judge and the jury at trial in this case that in your opinion, cigarette advertising, marketing and promotion by itself has caused any nonsmoking adult in the State of Texas to start smoking?
A. What I would tell the jury is that I have not seen any empirical studies that are done in social science that hold to those rigors of social science that have done longitudinal studies that have isolated population so that they could have a population that have been

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exposed to advertising, marketing and promotion and a population that had not been exposed to advertising, marketing and promotion. 15:27 15:27 15:27 15:28

And having seen no study like that, I would not be able to say that there was scientific evidence from empirical research that was a longitudinal study that holding the rigors of social science had indicated that there was -- that there was a cause and effect relationship because I have seen no studies like that. And it is my understanding that no longitudinal studies like that have been done. 15:28 15:28 15:28 15:28 15:28 15:28 15:28 15:28

Q. And, Professor Stout, would your testimony be the same with regard to causing any nonsmoking adolescent in the State of Texas to start smoking? 15:28 15:28 15:28 15:28

A. I don't believe that I, again, have seen any empirical research that has isolated two populations. One is a control group that gets no exposure to advertising, marketing or promotions and one that grows up in American culture where they are exposed to $6 billion worth of advertising, promotions and 15:28 15:28 15:28 15:28 15:28 15:28

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marketing for advertising -- for cigarette products annually. 15:28 15:29

I have not seen a study like that that looks at adolescents and that holds to the rigors of social science that can make a cause and effect conclusion because I have seen those studies like that. I'm not aware that any have been done. 15:29 15:29 15:29 15:29 15:29 15:29

Q. Professor Stout, would your testimony be the same with regard to any alleged causing of African Americans in the State of Texas to start smoking? 15:29 15:29 15:29 15:29

A. I, again, would tell the jury that I had not seen any empirical studies that were longitudinal, and by longitudinal, we're looking at probably 15 or 20 years so that we can get youth -- a young age up to the typical initiation age for smoking of individuals. 15:29 15:29 15:29 15:29 15:29 15:29

And I have not seen any empirical research that holds to the rigors of social science that is a longitudinal study with these two populations, one African American population that had not been exposed to advertising, promotion or marketing and 15:29 15:29 15:29 15:29 15:30

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another population that had grown up in the United States where they were, in fact, exposed to that, as the normal population is in the United States. I have seen no studies like that that would lead me to have an opinion on -- to base an opinion on cause and effect under those situations.

Q. Professor Stout, would your testimony be the same with respect to nonsmoking Hispanics in Texas beginning to smoke?

A. Again, I would tell the jury that I had not seen any empirical longitudinal studies that had been conducted using a control group that had not been exposed to advertising, marketing and promotions and another group that had been exposed, as people in the United States are exposed. And I have not seen any studies of this nature. I'm not aware of any that have been done that hold to the rigors of social science. And so I would not be able to base an opinion on that.

Q. And would your testimony be the same with respect to cigarette advertising, marketing and promotion by itself ever having caused women, nonsmoking women in the State of

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Texas, to start smoking? 15:31
A. Again, if we're holding to the rigors of social science and looking at a longitudinal study that involves two groups: one that is not exposed to any advertising, promotion or marketing; another group then that is exposed to advertising, promotion and marketing as it occurs in the United States, that I am unaware of any studies of that nature that have been done, and I have not seen those studies. 15:31
Q. Are you going to tell the judge and jury at trial that in your opinion, cigarette advertising, marketing and promotion by itself has ever caused anyone to continue smoking in the State of Texas? 15:31
A. Again, I would say that I have not seen any studies that have taken smokers that -- a longitudinal study that has looked at smokers and has isolated those that have been exposed to advertising, marketing and promotion as it is -- as it occurs in the State of Texas and has occurred in the State of Texas and a group then that is a group that has not been exposed to any advertising, marketing and 15:32

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promotion. And I'm not aware of any of those studies and would not be able to base an opinion on that study. 15:32 15:32 15:32

Q. And so to the rigors of social science you would not be able to render that opinion at trial; is that correct? 15:32 15:32 15:32

A. I am not familiar with any studies of the nature that I have just elaborated on that look at a longitudinal study that have a control group that hold to the rigors of social science for this particular target group that you mention. 15:32 15:32 15:32 15:32

Q. Are you going to tell the jury -- the judge and jury at trial that in your opinion -- that in your expert opinion anything the tobacco industry did has ever caused anyone to start smoking in the State of Texas? 15:32 15:32 15:32 15:32 15:32

A. And this is within -- holding to the rigors of social science? 15:32 15:32

Q. Correct. 15:32

A. My answer then is similar to what my previous answers have been, that I'm unaware of any longitudinal studies that have been done with a controlled population that has received no exposure to advertising, marketing or 15:32 15:33 15:33 15:33

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promotion, and another population then that has been exposed under the conditions with which we are exposed to those types of messages in the State of Texas, any study that is conducted or has been conducted upholding to the rigors of social science. I'm not aware that any of those studies have been done. 15:33

Q. So you would not be able to render to such an opinion to the rigors of social science; is that correct? 15:33

A. To the rigors of social science, based on empirical studies with the criteria that I have just elaborated on. 15:33

Q. Are you going to tell the judge and jury at trial that in your opinion anything the tobacco industry is alleged to have failed to do has ever caused anyone to start smoking in the State of Texas? 15:33

A. And this is again within the -- 15:33

Q. Correct. 15:34

A. -- rigors of social science? 15:34

Q. Correct. 15:34

A. So I -- similar to my previous answers, that I am not familiar with any empirical research 15:34

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that -- a longitudinal study that has been conducted that has used a control group that has not been exposed to advertising, marketing or promotions, and another group then who have been exposed to advertising, promotion and marketing in the State of Texas that is -- has been conducted within the rigors of social science. And I have not seen any studies of that nature. 15:34

Q. So you cannot provide such an opinion as an expert witness within the rigors of social science; is that correct? 15:34

A. Based on using studies of that source to use the rigors of social science to make that opinion, I'm unfamiliar at this point with any studies of that type -- 15:34

Q. And so you could not so testify; is that correct? 15:34

A. I -- 15:34

Q. Within the rigors of social science. 15:34

A. Within the rigors of the social, I'm unaware of any studies of that nature. 15:34

Q. Professor Stout, are you going to tell the jury at trial that in your expert opinion, anything the tobacco industry is alleged to 15:34 15:35

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have failed to do has ever caused anyone to continue smoking in the State of Texas? 15:35

MR. HOHN: Legal cause or social science cause? 15:35

MS. TYLER: Ed, don't play these games with me. 15:35

MR. HOHN: Well, I'll just clear it up.

MS. TYLER: No, you won't. No, you won't. This is your plan. You helped your judge write it, so I want you to abide by it, please. 15:35

MR. HOHN: I'm just --

Q. We have been very clear up until now that I'm talking about the rigors of social science and cause in the social science context. Are you in any way confused about that, Professor Stout? 15:35

A. I understand at this point that you have been querying me within the social science rigors. 15:35

Q. And I will ask my question again, and I hope I will not be interrupted again. 15:35

Are you going to tell the jury at trial that in your expert opinion, anything the tobacco industry is alleged to have 15:35

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failed to do has ever caused anyone to continue smoking in the State of Texas? 15:35

A. As I have said, I have -- I am not familiar with any studies, empirical research that adheres to the rigors of social science that have looked at two populations, a controlled population that has not been exposed to advertising, marketing and promotions and a population that has been exposed to marketing, advertising, and promotions, as the citizens of the State of Texas have been, relative to being able to make an opinion on cause and effect based on that type of evidence. 15:35 15:36 15:36 15:36 15:36 15:36 15:36 15:36 15:36

Q. And so as an expert witness in social science, you would not be able to render such an opinion with the rigors of your discipline in social science; is that correct? 15:36 15:36 15:36 15:36

A. Well, I think I'm here as an expert in advertising, marketing and promotions and so certainly I do work in social science and so my research adheres to those criteria. I believe you said I was an expert in social science. 15:36 15:36 15:36 15:36 15:36

Q. Do you think you are not an expert in social 15:36

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science? 15:36
A. Well, there's a whole domain of social science, and certainly there are -- my expertise is in advertising, marketing and promotions. 15:36 15:37 15:37 15:37
Q. Are you going to tell the jury at trial that in your expert opinion anything the tobacco industry has -- did has ever caused anyone to continue smoking in the State of Texas? 15:37 15:37 15:37 15:37
A. Again, within the rigors of social science? 15:37
Q. Correct. 15:37
A. I'm not familiar at this point with any empirical studies that have been undertaken that use -- have a control group that has not been exposed to advertising, marketing and promotions and a group that have been exposed to advertising, marketing and promotions as the individuals in the State of Texas have. And so I would not be prepared to be able to make an opinion based on empirical research upholding the social science -- rigors of social science. 15:37 15:37 15:37 15:37 15:37 15:37 15:37 15:37 15:37 15:37 15:37 15:37
Q. And Professor Stout, is part of the reason that you would need to have longitudinal studies that compare populations that have 15:38 15:38 15:38

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never seen advertising, and populations that have seen advertising because in order to identify and isolate the impact from all of the those other factors, it's -- is it difficult to do that, is that correct, given the complexity and individual nature of consumer decision making? 15:38

A. Well, several of your questions have asked about the impact of advertising, marketing and promotion. So to know what that is, one needs to have a population that has not been exposed to that so one can determine what the impact of that part of the numerous aspects of consumer decision making, what part that plays. 15:38

Q. And that's never been done. Is that your understanding? 15:38

A. I have not -- I'm not aware of any studies, as we have said, that -- social science studies upholding to those rigorous standards that have, in fact, isolated populations so that you have a population that you would know they have been controlled to the extent that they have not been exposed to advertising, marketing or promotions. 15:38 15:39

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Q. And that would be necessary to draw a cause and effect relationship between those two; is that right? 15:3

A. If you are trying to isolate the cause and effect relationship based on the definition relative to social science rigors, that you would then need to have a population in that sense that had not been exposed to the messages and stimuli that you are implying have some impact. 15:3

Q. And I don't want to make you go through your -- the litany again, but I just want to ask you: Do you intend to tell the jury at trial that in your expert opinion the combination of advertising, marketing or promotion by itself has ever caused any Medicaid recipient to start smoking? If your answer would be the same, you can just tell me my answer would be the same, and we can kind of short-circuit this. 15:4

A. We should probably for the record have the answer.

Q. Are you going to tell the jury at trial then in your expert opinion, the combination of advertising, marketing and promotion by 15:4

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itself has ever caused any Medicaid recipient in the State of Texas to start smoking? 15:40
A. So, again, I'm not aware of any studies that have -- empirical studies that have adhered to a social science, the rigors of social science, that have isolated population of Medicaid recipients that have not been exposed to advertising, marketing and promotion and another group of Medicaid recipients that have, in fact, been exposed to advertising, marketing and promotions as they have occurred in Texas. So I am unable to base an opinion on that type of research because I'm not aware of anything pertaining to that. 15:40 15:40 15:40 15:40 15:40 15:40 15:41 15:41 15:41 15:41 15:41 15:41
Q. And you are not able to opine in that sense to the level of rigor in social science because that research does not exist; is that correct? 15:41 15:41 15:41 15:41
A. I'm not aware of any studies that have been done that I could use to base my opinion on. 15:41 15:41
Q. Would your answer be the same with respect to Medicaid recipients, any Medicaid recipient in the State of Texas continuing smoking? 15:41 15:41 15:41
A. My answer would be similar to previously, 15:41

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that I would -- I'm not aware of any studies at this point in time that I have looked at two separate populations of Medicaid recipients -- I'm sorry -- 15:41

Q. Yes, Medicaid recipients in the State of Texas. 15:41

A. -- in the State of Texas: one group who has not been exposed to advertising, marketing and promotions, and one group who has been exposed to advertising, marketing and promotions to the manner which the population of State of Texas has been. I'm not aware at this point in time of any studies of that nature that I would be able to use to base my opinion on, given -- under the rubric of the rigors of social science. 15:41 15:42 15:42 15:42 15:42 15:42 15:42 15:42

MS. TYLER: At this point in time I'm going to pass the witness to my co-counsel. I appreciate your answering my questions both in August and here today. And I may have a few more questions, but at this time I will pass the witness. 15:42 15:42 15:42 15:42

EXAMINATION

BY MR. PADDOCK:

Q. How are you today? 15:42

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A. Good. And you? 15:43
Q. Should I call you Doctor or Professor? 15:43
A. It doesn't matter. Professor is fine. 15:43
Q. And you teach right here at the University, I take it? 15:43
A. I do, yes. 15:43
Q. And teach students how to advertise, I assume? 15:43
A. I teach courses in the department of advertising, yes. 15:43
Q. And have you ever worked for an advertising agency? 15:43
A. Yes, I worked for Judge Advertising and Public Relations. 15:43
Q. Pardon me?
A. It's on my vita. 15:43
Q. Pardon me? 15:43
A. I have worked for Judge Advertising and Public Relations. I believe that's on my vitae. 15:43
Q. Did you create ads when you worked there for that agency? 15:43
A. I did. I did numerous things at that agency and advertising, creating advertising was one of them, yes. 15:43

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Q. Did you ever create any ads for tobacco companies? 15:43
A. We didn't have any tobacco clients there. 15:43
Q. Did you use imaging and themes in your advertising for your clients at that agency? 15:43
A. Where they were appropriate, yes. 15:44
Q. And I'm assuming that you teach students here in your courses to use -- to use themes and imagery in their ads; is that correct? 15:44
A. Students are taught different ways of presenting the message, based on the objectives of the client. 15:44
Q. And do advertising agencies for all types of consumer products use imaging and themes for their ads? 15:44
A. Many products and-- many products do, yes. 15:44
Q. And that is appropriate, is it not, in advertising? 15:44
A. It is appropriate under certain situations, yes. 15:44
Q. There's nothing unlawful about using imagery and themes in advertising, is there? 15:44
A. To my knowledge, it is a means that is used by numerous -- for numerous products and brands in their advertising. 15:44

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Q. Of all types of consumer products, aside from tobacco? 15:45
A. Consumer products, right, in addition to tobacco. 15:45
Q. All right. Now, I want to make a distinction between what you are calling advertising, marketing and promotion and some type of legal misconduct. Okay? 15:45
A. Yes. 15:45
Q. Do you intend to offer any opinions at the trial of this case about any distinction between lawful advertising, marketing and promotion and legal misconduct or culpability? 15:45
A. And what do you mean by legal misconduct? 15:45
Q. Well, advertising is legal, is it not? 15:45
A. Advertising for some products is legal, yes. 15:45
Q. It's legal for tobacco products, correct? 15:45
A. It's legal -- right, it's legal to advertise -- I believe there's a law against purchasing that you need to be of age to purchase. 15:45
Q. But you agree that advertising for tobacco products is legal, and it's allowed here in the United States, don't you? 15:46

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A. It is legal in the United States, yes, for -- in some venues. Obviously, it's no longer allowed in broadcast media.

Q. But it is lawful and authorized here in the State of Texas.

A. Advertising in some venues, yes. Still, broadcast would not be legal in the State of Texas.

Q. Now, I don't think that you answered my question earlier. Will you make a distinction at trial between lawful advertising, marketing and promotion and unlawful conduct on the part of tobacco industry?

A. And by unlawful conduct, you mean?

Q. I mean something that's not authorized by law here in the State of Texas.

A. Evidence that I have seen and things that I have reviewed show that advertising in the State of Texas, while being within the framework of the law in that it's legal to advertise in Texas, that there are situations where individuals who are illegal in the product category are exposed to these messages and promotions.

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Q. Well, it would be impossible to segregate among various segments of the population, would it not? 15:47

A. Well, impossible is probably -- to have total segmentation would be impossible, but certainly there are levels to which advertisers can target and place their messages so that they are reaching the population that one assumes they're intending to reach. And the term in advertising actually is waste or spillage because you are spending your money to reach a population that theoretically you are not trying to reach. 15:47 15:48

Q. I want to quickly run through a few questions that you may have already answered, but I want to ask them specifically for you. Do you have an opinion as to whether or not any specific Texas Medicaid recipient, in fact, started smoking because of any alleged misconduct on the part of the tobacco industry? 15:48

A. I have not seen -- I have not in my review at this point in time seen information about -- specifically related to Medicaid recipients. 15:48

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And so at this point in time, I do not recall having reviewed anything that would allow me to make a comment at this point about that. 15:48
Q. And as you testified earlier, I assume that you from your own personal knowledge, excluding any opinions that you may hold, do not have knowledge of any specific Medicaid recipient who, in fact, started smoking because of any misconduct on the part of the tobacco industry; is that correct? 15:48 15:49
A. At this point in time, I'm not aware that I know of any particular individuals who are on Medicaid that started smoking. 15:49
Q. Will you offer an opinion at trial as to whether or not a specific number of Texas Medicaid recipients, in fact, started smoking because of the alleged misconduct of the tobacco industry? 15:49
A. At this point in time, I haven't reviewed, to my knowledge, information about Medicaid recipients, so I at this point am unable to comment on that. 15:49
Q. Well, as counsel informed you earlier, we're going to trial in a week, possibly two weeks. Will you offer any opinion as to 15:49

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whether or not any specific number of Texas Medicaid recipients, in fact, started smoking because of any alleged misconduct on the part of the tobacco industry?

A. I'm not prepared to make an opinion like that at this time, but my understanding is, is that the -- sort of the process of continuing to look at materials continues. And so I know there are a number of items that had been listed in the deposition that had been requests from the defendants that I had wanted to review, and I don't believe that we have obtained all those yet, so depending on what else I receive.

Q. All right. This is asking the question just in a slightly different way. I also assume based on your answers that you will not offer any opinions at trial as to whether or not there is an identifiable percentage of the Texas Medicaid population who, in fact, began smoking because of any alleged misconduct on the part of the tobacco industry.

A. Well, as I said, I haven't reviewed to my knowledge any evidence relative to Medicaid smokers that would allow me at this time to

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be able to make that opinion. 15:51
Q. And you can't offer any opinions because you simply have nothing to base an opinion on, I take it? 15:51
A. Well, at this point in time, I have not reviewed any documents or seen any data relative to Medicaid recipients. 15:51
Q. Are you aware of any data, documents or any type of information that would give you a sufficient base from which to offer such an opinion? 15:51
A. I'm not aware of any at this time, but that doesn't mean that there aren't reports or the like that I would review. 15:51
Q. When were you contacted and asked to be an expert in this case? 15:51
A. I believe I was contacted in April. 15:51
Q. And have you undertaken to research areas so that you can offer opinions that would be necessary for the State to prove its case at trial? 15:51
A. Well, I have been reviewing documents and advertising and articles. Obviously, I have some familiarity with cigarettes and tobacco. I'm an expert based on my 15:52

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background, education and experience in advertising, marketing and promotions. And so I have been -- based on that, that I have used that to form my opinions and I do -- I have been reviewing documents and materials since -- continuing. 15:52

Q. All right. I think I can short-circuit the rest of my questions. They are similar to what Ms. Tyler has asked you, but I'm also interested in knowing whether you will offer any opinions at trial as to whether any specific number of Texas Medicaid recipients, in fact, continued smoking because of any alleged misconduct on the part of the tobacco industry. 15:52 15:53

A. And so again, I would say at this point in time I have not reviewed documents, to my recollection, that would allow me to do that. 15:53

Q. Do you know of any way to offer some percentage of the Medicaid population who either started smoking or did not stop smoking because of any alleged misconduct on the part of the tobacco industry? 15:53

A. I have not personally seen any documents or reports of that nature. And -- 15:53

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Q. Would you agree with me, ma'am, that the only way to offer any type of -- any percentage or specific number other than to individually question individuals would be to speculate or guess as to what that number would be? 15:53 15:53 15:54 15:54 15:54

A. Well, I'm not certain what kind of information exists relative to Medicaid. And there may be surveys, for example, as there are at the national level that survey youth and the like about their smoking habits and other habits. There may be similar surveys or research that's been conducted that does identify Medicaid recipients relative to other behavior patterns that they have, but I'm not familiar with that at this point in time. 15:54 15:54 15:54 15:54 15:54 15:54 15:54 15:54 15:54

Q. You have talked earlier about cause in the social science field, and are you a social scientist? 15:55 15:55 15:55

A. Work in the advertising and marketing is typically under the rubric of social science, yes. 15:55 15:55 15:55

Q. So it's fair to say that your expertise is in social science? 15:55 15:55

A. Well, the work that I do I -- typically 15:55

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because of the nature of the research questions that I ask tend to be social science based and I publish in journals that adhere to those kinds of standards. There are many other of my colleagues who do research in advertising that may be historical in nature, it may be semiotic analysis where individuals are looking at deconstructing advertising. There are a number of different things that one may do as research in advertising, marketing and promotions that would not be published in journals or be expected to adhere to a positivist approach to research in social science, so...

Q. One thing that you mentioned a moment ago would be some type of historical analysis --

A. Right.

Q. -- of the effect of advertising, marketing and promotion.

A. Yes.

Q. Would you agree that in this case the only way to determine, in fact, whether or not a specific individual either started to smoke or did not stop smoking because of any

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misconduct on the part of the tobacco industry would be to individually question those individuals to determine why they did or did not make such a choice? 15:56

A. So you are speaking of people historically? 15:57

Q. Yes, ma'am. 15:57

A. So people that are alive or people that are -- 15:57

Q. People that are alive. 15:57

A. Okay. Or dead? Well, clearly in getting the individual's perspective, the nature of social science is to query the individual where one can. Obviously, research is also done that looks at economics. There are a number of different ways I have seen in documents that I believe have been disclosed take a historical view in that they look at different cohorts of individuals relative to across time. And so you can look at -- look at research that way as well without necessarily speaking to the individual. 15:57

Q. Ma'am, I want you to listen to my question very carefully, and I'm going to break a series of question down. I want you to listen to it and then do your best to answer 15:57

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the question that I ask you. Okay? 15:57
A. Okay. 15:58
Q. Do you agree that from a historical perspective, the only way to determine whether any specific Texas Medicaid recipient started to smoke because of any alleged misconduct® on the part of the tobacco industry is to ask that individual why he or she started to smoke? 15:58
A. Well, I'm not certain that's the -- that's the only way to get at that information. Obviously, one may have data -- obviously, if you're trying to look at individuals, meaning the individuals in this room, clearly that would be the most convenient way for the individuals in this room -- 15:58
THE COURT REPORTER: I'm sorry. Your voice is dropping just a bit.
A. But there -- I would suggest, although I'm not, as I said, aware of the kinds of -- all of the kinds of records that are kept on Medicaid recipients, that there wouldn't be other ways to be able to address that question. 15:59
Q. Ma'am, you're obviously very intelligent. I 15:59

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can tell that by the way you're answering my questions. And I'm going to try to phrase this as precisely as I can so that I can get you to answer my question. Okay? 15:59

A. Yes. 15:59

Q. Do you agree that the best way to determine historically the reason why an individual Texas Medicaid recipient started to smoke would be to question that individual? 15:59

A. I would agree that the best way or the ideal way would be to talk to the individual consumers where one could do that, yes. 15:59

Q. And you have testified earlier that the decision whether or not to smoke is a complex one, correct? 15:59

A. Consumer decision making is complex and involves a list of issues that we have elaborated on in the course of this deposition. 16:00

Q. And you have testified earlier, based upon what I believe you refer to as a propensity of evidence, that the likelihood that cigarette advertising, marketing and promotion could have caused people to start smoking. Was that the language that you used 16:00

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earlier? 16:00
A. Right. That was, I believe. 16:00
Q. Now, are you familiar with the term cause in fact? 16:00
A. Cause and fact? 16:00
Q. Cause in fact. 16:00
A. Cause in fact. 16:00
Q. That, in fact, one thing caused another. 16:00
A. I don't believe I'm familiar with that term. 16:00
Q. Okay. Would you agree with me that the only way or the -- for the sake of getting the question answered, the best way to determine whether cigarette advertising, marketing and promotion was a cause, in fact, of a particular individual's decision to smoke would be to ask that individual whether the advertising caused him or her to start smoking? 16:00
A. Well, I don't believe that that would be the only way to determine that. 16:01
Q. How else could you determine it? 16:01
A. Well, like I said, I'm not an expert in the kind of data that are kept on Medicaid recipients, but there may be other ways. 16:01
Q. Can you give me some other way right now 16:01

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today in this deposition? 16:01
A. Well, as I said, I'm not familiar with the 16:01
nature of the data that are compiled on 16:01
Medicaid. 16:01
Q. You said earlier that you could not make 16:01
blanket statements with respect to an 16:01
individual's choice to begin smoking, 16:01
correct? 16:01
A. I believe I did. I have to see -- 16:01
Q. Is that not what you are going to offer to 16:01
this jury, if you are going to offer some 16:01
opinion that the propensity of the evidence 16:02
is that in all likelihood cigarette 16:02
marketing, advertising and promotion could 16:02
have caused somebody to start smoking? Is 16:02
that not a blanket statement? 16:02
A. Well, I have reviewed evidence that provides 16:02
information relative to sales and -- or 16:02
rather dollars spent and initiation. I have 16:02
looked at evidence in a number of different 16:02
areas that I have reviewed for this case. 16:02
And it is my opinion that in the most likely 16:02
situation that there is a relationship 16:02
between advertising, promotion and marketing 16:02
and initiation of smoking and most likely the 16:03

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difficulty that individuals have in quitting smoking as well. 16:03

Q. Well, let me sum up then what I think I have covered with you today, ma'am. You cannot offer any scientific basis whatsoever for identifying any specific segment of the Texas Medicaid population that started smoking because of any alleged misconduct on the part of the defendants. Correct? 16:03

A. I believe that what I stated was that I have not been aware of any empirical research studies that have adhered to the criteria that we have just discussed earlier that were longitudinal and they had a control and an uncontrolled -- and a tested population or group, that I'm not aware of any of those studies upon which to base my -- 16:03

Q. And the same would be true that you have absolutely no scientific basis whatever to offer an opinion that any specific percentage of the Texas Medicaid population could not stop smoking because of any misconduct on the part of the defendants; is that correct? 16:04

A. Well, relative to your terminology, scientific basis. As I said, I have not seen 16:04

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any empirical research studies that have adhered to the criteria that we have discussed earlier that have looked at that particular issue, so I'm not prepared to make an opinion on that at this point in time. 16:04

Q. And although you have said previously that the cigarette marketing, advertising and promotion could have caused people to start smoking or not to stop, you cannot identify one specific Texas Medicaid recipient who, in fact, started smoking or, in fact, did not stop smoking because of any alleged misconduct on the part of the defendants. 16:04 16:05

A. I believe I said that I do not -- I do not personally know a Medicaid recipient who had -- who was a smoker or not. 16:05

Q. And you cannot identify any percentage of the Medicaid population who, in fact, started smoking because of any alleged misconduct on the part of the defendants. 16:05

A. I'm not aware of studies relative to Medicaid recipients, so I have not reviewed that material, so I am not familiar with any studies that may or may not be able to give that type of a quantification that you are 16:05

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looking for or asking. 16:05
Q. Can you -- of all the hundreds of advertisements that you have looked at, can you identify one that contains a fraudulent statement? 16:05 16:06 16:06 16:06
A. Well, it depends on what you mean by fraudulent statement, I suppose. I don't know what the legal -- what the legal definition of that is relative to if it has to be stated in language or if the imagery and the information, the connotations that the individuals take away from the ads, in fact, then lead them to believe in something that is, in fact, not true. 16:06 16:06 16:06 16:06 16:06 16:06 16:06 16:06 16:06
Q. Ma'am, is the short answer to that question that you cannot identify one single advertisement that contains a fraudulent statement, of the hundreds that you have reviewed? 16:06 16:06 16:06 16:06 16:06
A. No, I don't think that is a short answer to it. 16:07 16:07
Q. Could you provide me with one advertisement that contains a fraudulent or deceptive statement, as you sit here today? 16:07 16:07 16:07
A. Well, if one takes statement, defines 16:07

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statement to encompass the messages, the connotations that individuals take away from processing the ad, then I have seen numerous ads that have those types of statements, quote, unquote, that individuals could read to see that, in fact, the message that was being promoted by the advertiser promised something other than the product would deliver.

Q. And that's what you are referring to as imagery and theme and that sort of thing?

A. Right. Clearly, I have yet to see an ad, a cigarette ad for a brand that says there is a strong relationship between cancer and cigarette smoking. That would be --

Q. Have you seen -- excuse me. I'm sorry.

A. That might be a statement, and I have not seen statements like that on advertising for cigarette brands in the United States. So, clearly imagery is part of that. Much advertising for cigarettes is predominately imagery. There isn't much factual information on most of the -- in most print advertising.

Q. The advertisements do contain a

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Congressionally mandated warning, do they not? 16:08
A. They do as a very small proportion of the overall size of the ad have a Congressionally mandated warning, yes. 16:08
Q. And there are many variations of them, but the sum and substance of them is that smoking is dangerous to your health? 16:08
A. There are several renditions of that message that appear in most ads in a very small proportion of the overall rest of the area that's allocated to the ad. 16:08
Q. And what role does that Congressionally mandated warning that smoking is dangerous to your health play in the individual choice as to whether or not to be influenced by advertisement? 16:09
A. Well, I believe the purpose of that warning is to -- is to provide viewers of the ad with the message, with the warning as mandated. But as I say, those messages are -- certainly if one looks at a Marlboro ad and sees a double truck or two-page spread in four-color bleed and sees the size of warning relative to the size of the ad, there's -- one leaves 16:09

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with the imagery, most likely, rather than with a warning because the warning is such a small proportion of the total size that's devoted to the overall message. 16:10

Q. Will you offer an opinion at trial as to what effect the warning has on a consumer who sees the advertisement -- excuse me -- sees the warning in the advertisement? 16:10

A. I have not reviewed real carefully some of the studies on warnings, but I'm aware that there are studies on warning labels and the effectiveness of those warnings. 16:10

MR. PADDOCK: I may have one or two more questions, but I'm going to pass the mike to the next attorney. 16:10

EXAMINATION

BY MR. HRANITZKY:

MR. HRANITZKY: It's Dennis Hranitzky. I was going to state it on the record. 16:11

Q. Doctor Stout, my name is Dennis Hranitzky. I represent the Council for Tobacco Research. Are you familiar with the Council for Tobacco Research? 16:11

A. I have heard of it, yes. 16:11

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Q. And what do you understand the Council for Tobacco Research to be? 16:11
A. Well, that they do research on various issues relative to tobacco and cigarettes. 16:11
Q. Could you be more specific? You say they do research. Do you mean they conduct research themselves? 16:11
A. Well, I believe more so that they facilitate so that others can undertake research. 16:11
Q. And what kind of research do you understand CTR to facilitate others to conduct? 16:12
A. I'm not familiar with all the -- all the studies. 16:12
Q. Well, are you familiar at all with the types of research that CTR facilitates? 16:12
A. I'm familiar -- I'm not real familiar with it, no. 16:12
Q. What is the basis of your understanding of what CTR is? 16:12
A. Well, I have done some reading in my review relative to different organizations that the -- have promoted the tobacco industry over time. 16:12
Q. And could you identify for me what you have read that has formed the basis of your 16:12

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understanding of what CTR is? 16:12
A. Well, I have seen various things. I have seen some internal documents, and I have also seen in -- just in the course of reading, in discussion of the sort of evolution of research and promotion relative to -- that is supported by the tobacco industry. 16:12 16:13 16:13
Q. I see. Well, aside from internal documents, can you identify for me what other types of materials you may have reviewed that became -- form the basis of your understanding of what CTR is? 16:13 16:13
A. Well, I'm trying to recall. I know I reviewed some things relative to advertisements or special sort of prevention messages, and I'm not quite sure who the source of those were now. Usually the brand is very prevalent in those, some booklets and certainly advertisements. 16:13 16:13
Q. And those advertisements and booklets that you are referring to, did you understand those to have originated with CTR? 16:13 16:14
A. I'm not sure. 16:14
Q. Are you aware of any advertisement that originated with CTR? 16:14

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A. I'm not sure at this point. 16:14
Q. So you could not identify -- I'm sorry. 16:14
A. Well, I have seen some things, but I'm not sure if they were originated by CTR or not. 16:14
Q. Okay. So you could not identify any particular advertisement or booklet or other type of communication that you were reasonably certain originated with CTR? 16:14
A. At this point, no, I don't believe I could. 16:14
Q. Could you identify any publication or any form of document or communication that you believe with certainty, some certainty originated with CTR? 16:14
A. As I say, I have reviewed things and I have reviewed a lot of materials. And at this point, I'm not certain that I haven't seen something, but I couldn't identify a specific item at this point. 16:15
Q. Okay. So you couldn't, at this point, identify any particular individual that might have read or seen some document that originated with CTR; is that correct? 16:15
A. Well, I don't personally know of any individuals that have been exposed to any of these messages. 16:15

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Q. Okay. Well, when you say these messages -- 16:15
A. Well, assuming. As I say, I'm not familiar with -- I have reviewed a number of things, and I'm not certain at this point in time the source of some of those pieces that I have reviewed. 16:15
Q. Okay. Well, at the present time, do you plan to offer any opinions at this trial regarding CTR? 16:15
A. At this point in time, as I say, I'm not certain that I would offer opinions specifically about CTR, but as I say, I've reviewed a number of materials and I can't attribute sponsorship at this point in time. My memory fails me. 16:16
Q. Well, do you believe you might be offering opinions regarding CTR at the trial in this case? 16:16
A. I could be, yes. 16:16
Q. And what would have to happen between now and then for you to determine that you would be offering opinions regarding CTR at the trial? 16:16
A. Well, I would be reviewing the materials, the documents and the evidence that I have. 16:16
Q. Now, but that evidence and those documents 16:16

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and materials, those are not documents that you have previously identified as forming the basis of your opinions in this case; is that correct? 16:16

A. Well, some are and some may not be. As I said, I am continuing to review things, but I do have documents and evidence in my possession now that as I say, I may have -- I may have perused things that were, in fact, the source for CTR, but I am at this point unable to comment on that. 16:17

Q. But so at this point in time, you don't know if the basis of opinions you might offer about CTR was disclosed previously in the course of this litigation or not; is that correct? 16:17

A. Well, certainly documents I have in my possession, many of those have been disclosed. It's been clear, it's come up today that some things I have in my possession have not yet been disclosed. 16:17

Q. And you're not -- but you are not aware with respect to those that have been disclosed if those documents have anything to do with CTR? 16:17

A. Well, that's what I'm saying. My memory is 16:18

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failing me on the source of some of the things that I have in my possession currently. 16:18

Q. Okay. 16:18

MR. HRANITZKY: Well, just for the record, and this may have already been requested by co-counsel, but just so it's clear, we object to her review of the documents that have not already been disclosed in the discovery process of this case, but without waiving that objection, we would request that any additional documents or materials that she reviews to form the basis of her opinions be disclosed to us in as -- as expeditiously as possible, given the fact that the trial in this case is going to begin in a matter of days. 16:18

And I have no further questions for Doctor Stout. 16:18

MR. HOHN: Do you want me to go now or wait? 16:18

MS. TYLER: Wait. 16:18

MR. HOHN: Okay.

FURTHER EXAMINATION

BY MS. TYLER:

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Q. Professor Stout, I just have a few more questions for you. Relative to your assertions that-- as stated in your affidavit at the very least, that cigarette advertising, marketing and promotion has mislead and deceived individuals in the State of Texas about the adverse health effects involved with cigarette smoking, let me ask you first: Is it your opinion that cigarette advertising, marketing and promotion has mislead and deceived individuals in the State of Texas about the adverse health effects involved with cigarette smoking?

A. I believe that individuals when they look at the advertising and participate in the marketing and promotional efforts, that they do not consider the adverse health aspects to the behavior.

Q. It's your opinion that individuals when they see advertising do not consider the health effects of cigarette smoking when they look at that advertisement. Is that what you are saying?

A. It's my opinion that speaking about advertising per se that that advertising --

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that the message that individuals are most likely to take away is the message that is contained or delivered via the imagery, the statement if there are -- if there is language in the ad like "alive with pleasure" as we talked about earlier today, and that they are more likely to be taking away that information from the ad rather than the warning that appears in the -- on the warning box.

Q. So is it your testimony that the imagery contained in cigarette advertising, marketing and promotion has misled and deceived individuals in the State of Texas about the health effects involved with cigarette smoking. Is that your testimony?

A. I'm sorry. Would you repeat the question?

Q. Is it your testimony that the imagery contained in cigarette advertising, marketing and promotion has misled and deceived individuals in the State of Texas about the adverse health effects involved with cigarette smoking?

A. I believe that it has, yes. It certainly has contributed to that because with the bulk of

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the messages that are out there via advertising, they set an agenda. They sort of set a norm that, in fact, cigarette smoking promises the things that are portrayed in these ads. So it portrays lone rugged individualism, for other people, the notion that you can have fun, you will look healthy, you will be fine, you will have friends, you'll be thin, you'll be sophisticated, that these are the messages that individuals take away from those ads. 16:21

Q. And it's your opinion that those messages are misleading and deceptive; is that correct? 16:21

A. Well, to the degree that they -- that they don't offer the risks, information about the risks that one undertakes in taking up that behavior, that they don't -- that individuals may not be aware, relative to looking at the advertising, that they will be addicted and that they will not be able to quit if they want to easily. These types of things are not -- the messages do not -- the advertising, the marketing, the promotions do not provide that information for individuals. 16:22

Q. So, Professor Stout, you just testified that 16:22

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individuals may not be aware of the potential health impact of cigarette smoking and the potential alleged addictiveness of cigarette smoking. And relative to that, Professor Stout, have you undertaken any analysis of what individuals in the State of Texas have been told regarding the dangers of cigarette smoking?

A. What do you mean by analysis?

Q. Well, for example, have you reviewed systematically newspaper articles in various newspapers that are published and distributed around the State of Texas with regard to their coverage of smoking and health issue for the last 50 years?

A. I have not undertaken a content analysis of that type, no.

Q. Have you undertaken any analysis of newspaper coverage of the issue of cigarette smoking and its potential harmful effects and potential addictiveness in newspapers for the last -- any period of time?

A. I haven't undertaken a content analysis of smoking-related articles as they have been published in newspapers in the State of

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Texas.

Q. Have you reviewed any -- any newspaper articles regarding smoking and health that have been published in the last 50 years in Texas newspapers? 16:23

A. I have not undertaken a systematic study of those, no. 16:23

Q. Have you undertaken any analysis of those newspapers to ascertain what people in the State of Texas know regarding the health risks and potential addictiveness of cigarette smoking? 16:24

A. Well, I think there's a difference between content analyzing the newspapers and seeing what's printed in the newspapers relative to as you just stated in your question what people know. I don't know that because something is published in the newspaper, one could expect that individuals will, quote, unquote, know the content of that article. 16:24

Q. But you haven't done the analysis of the newspapers at any level to ascertain what people have been exposed to in the State of Texas nor what they know; isn't that correct? 16:24

A. I have not personally undertaken any content 16:24

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analysis of newspapers in the State of Texas on articles that have been published on cigarette smoking. 16:24

Q. On cigarette smoking and health? 16:24

A. Right. 16:24

Q. And the relationship between the two? 16:25

A. Right, on cigarette smoking and health. 16:25

Q. Professor Stout, have you undertaken any analysis of magazines which are published -- or which are distributed in the State of Texas to analyze their content and coverage of the issue of smoking and health? 16:25

A. I have not personally conducted a content analysis of magazines published in the State of Texas to ascertain the content or the extent of their coverage of smoking and health-related issues. 16:25

Q. And do you rely on the work of anyone else who has done such a content analysis? 16:25

A. At this point, I can't recall reviewing any articles of that nature. 16:25

Q. Have you undertaken any analysis of what school -- let me strike that. 16:25

Have you undertaken any analysis of what students in the State of Texas are 16:26

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taught in their school textbooks with regard to the potential harmful effects of potential addictiveness of cigarette smoking? 16:26

A. I have not done a content analysis of textbooks that are used in schools in the State of Texas -- 16:26

Q. Have you?

A. -- for smoking and health-related issues. 16:26

Q. Have you reviewed any school textbooks distributed and used in the State of Texas to ascertain what discussion is contained therein regarding the potential dangers and potential addictiveness of cigarette smoking as that information would be conveyed to school students in -- would be conveyed to students in the State of Texas in schools? 16:26

A. I have not reviewed textbooks that are used by students in the State of Texas relative to issues on smoking and health, no. 16:26

Q. Have you reviewed or undertaken any analysis of what individuals in the State of Texas have been told from sources like the American Cancer Society or the American Lung Association regarding the health effects of cigarette smoking or its alleged potential 16:27

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addictiveness?

A. I have not done a systematic review of any prevention programs that have been undertaken in the State of Texas relative to smoking and health.

MS. TYLER: I'll pass the witness. And I'm done. Thank you very much.

FURTHER EXAMINATION

BY MR. PADDOCK:

Q. Ma'am, I just want to sum up. Brady Paddock, again. As you sit here today, you have no basis whatsoever, scientific or otherwise, to offer any opinion at trial that the alleged wrongful conduct of the tobacco industry actually caused a specific number of Texas Medicaid recipients smokers to begin smoking cigarettes, which smoking behavior they would not have engaged in but for the wrongful conduct of the tobacco industry; is that correct?

A. I have not seen any empirical studies that have looked at cause and effect, as I assume you're still using it, with the social science levels of rigor that, in fact, address with Medicaid recipients their

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smoking behavior such that it would provide a percentage. 16:28

Q. Ma'am, my question is not on a social scientific basis. It's whether you have any basis, any evidence that any specific number of Medicaid recipients or any specific percentage of Medicaid recipients were actually caused to begin smoking because of wrongful conduct of the tobacco industry. 16:28 16:29

A. I believe I said earlier that I had reviewed materials that specifically address Medicaid recipients, and so I can't comment on that at this point in time because I have not seen data or any articles that look at Medicaid recipients per se as different from other segments of the population. 16:29

Q. So for you to offer any opinions relative to the Texas Medicaid recipient population would require you to speculate? 16:29

A. Well, at this point in time I haven't reviewed any documents or seen any studies or data. 16:29

Q. So you have no basis on which to offer opinions that I'm referring to, other than to speculate as you sit here today? 16:29

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A. At this point in time, I have not seen any data or studies or documents relative to Medicaid recipients and their -- specifically their behaviors relative to smoking and health, no.

Q. And therefore, the only way in which you could offer any opinions relating to that specific population would be for you to speculate, correct?

A. At this point in time, because I have not reviewed any information about Medicaid recipients, I couldn't offer an opinion.

MR. PADDOCK: Thank you, ma'am. That's all I have.

EXAMINATION

BY MR. HOHN:

Q. Professor Stout, my name's Ed Hohn. I'm with the Nix Law Firm, and I'm one of the lawyers that's representing the State of Texas in the action that's been filed in Federal Court in Texarkana. You understood that, don't you?

A. Yes, I do.

Q. First of all, for the next questions -- next few questions that I'm going to ask you, I would ask for you to base the conclusions and

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opinions on your background, your education, your observations, the documents that you've seen, the evidence that you've reviewed and the things that you have done in preparation for your expert testimony here today. Would you do that for me? 16:30 16:31 16:31 16:31 16:31 16:31

A. I will, yes. 16:31

Q. And would you also base your opinions and conclusions upon a reasonable degree of probabilities in marketing, advertising and promotion? 16:31 16:31 16:31 16:31

A. I will, yes. 16:31

Q. First of all, no one has given you a legal definition of cause and effect here today, have they? 16:31 16:31 16:31

A. No, they have not. 16:31

Q. Nor at any other time during your deposition in this case, have they? 16:31 16:31

A. No, I have not received that. 16:31

Q. I would like to read a couple of things for you, which I expect that the judge is going to instruct you and the jury on concerning causation. First of all, the law recognizes what is called producing cause, and the definition that I expect that the judge will 16:31 16:31 16:31 16:31 16:31 16:31

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read to you and the jury is, or means an efficient, exciting or contributing cause that in a natural sequence produces the occurrence or injury, and there may be more than one producing cause. Has anyone ever defined that for you? 16:31 16:32 16:32 16:32 16:32 16:32

A. No, they have not. 16:32

Q. The other legal cause which I expect what the judge is going to instruct you and the jury on addresses what is called proximate cause. Has anybody ever defined that for you? 16:32 16:32 16:32 16:32

A. No, they have not. 16:32

Q. None of the lawyers for the tobacco companies defined that for you, did they? 16:32 16:32

A. I haven't received any information about that in deposition, no. 16:32 16:32

Q. I'll read for you what I expect the judge will define for you as proximate cause. And proximate cause means that which in a natural and continuous sequence produces an event and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event or similar event 16:32 16:32 16:32 16:32 16:32 16:32 16:32 16:32 16:32 16:32 16:32 16:32 16:32

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might reasonably result therefrom. There may be more than one proximate cause of an event. Have you ever been told that definition before? 16:33

A. I have not received that definition in deposition, no. 16:33

Q. Not from any of these tobacco lawyers in the course of your deposition. Is that a fair statement? 16:33

A. Not in the three -- on the three different occasions that I have been deposed, no, I have not received that definition from anyone. 16:33

Q. First of all, specifically referring to producing cause and proximate cause, do you have a general understanding, now that I have read those definitions to you, of what those are? 16:33

A. I believe I do, yes. 16:33

Q. First of all, for the judge and jury, if you could define social science causation for them, please. 16:33

A. For the judge and jury? 16:33

Q. Correct. 16:33

A. Well, it would be defined, and especially 16:33

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positive as the science of using criteria in making judgments that apply certain -- certainly levels of rigor in conducting the research and also in setting confidence levels for hypothesis testing that you would use then to evaluate the success or lack of success of your test. 16:33 16:33 16:34 16:34 16:34 16:34 16:34

Q. Would you agree with me that social science causation is to a certainty? 16:34 16:34

A. Well, the reason one establishes the confidence limits is that one attempts to set within a reasonable level of certainty, but there are also different degrees of error, meaning that one is hoping if one replicates the study time and time again, that one will, in fact, arrive at the same conclusions. 16:34 16:34 16:34 16:34 16:34 16:34 16:34

Q. Within a 95 percent certainty, right? 16:34

A. Using those confidence levels, yes. 16:34

Q. And would you agree with me that -- well, first of all, let's look at the historical measurement of cause and effect from a social science standpoint dealing with cigarette advertising, marketing and promotion. Are you with me? 16:34 16:35 16:35 16:35 16:35

A. I believe so. 16:35

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Q. To analyze or study from a social science causation standpoint cigarette marketing and advertising and promotion, you have got to know what the people knew when the advertisement went out; isn't that right?
A. Well, to -- one needs to establish baselines or have control groups against which to measure some kind of effect or some kind of change.
Q. And in order to -- I think you called it a special group. What do you call that where you isolate the group from all the advertising promotion and marketing?
A. Well, if one is conducting a study, one would have a control group that wasn't exposed to whatever the stimuli were that you were testing.
Q. That's -- would that be possible in the -- given the present day budgetary expenditures by the tobacco companies, could you find a control group that had never been exposed to any tobacco advertising, marketing or promotion?
A. I think it would be very difficult or nigh unto impossible because of the pervasiveness

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in the culture to find a group that would have to be matched with the test group so that you are looking at similarities, but that would be nigh unto impossible to do. Certainly longitudinally especially. 16:36

Q. Longitudinal study? 16:36

A. Well, if one is looking at effects over time as opposed to a single exposure to an ad or message. 16:36

Q. Is it also important to test right after the ad has gone out, right after the promotional device has taken place in order to find out what the effect of the advertising, marketing and promotion was at that time? 16:36

A. Well, people test for different reasons, depending on their objectives. And clearly when one is looking for immediate response to advertising, one might test immediately after exposure. But advertising, I think, tends to work on cumulative effects such that we have multiple exposures. We spend money to buy repetition so that people are exposed to the message repetitively, and the likelihood of it having an impact certainly accumulates over time. And so some campaigns are very, 16:37

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very long running, and one assumes that those -- certainly that that enhances the effectiveness of that campaign. 16:37

Q. And that's exactly the point that I'm getting at. Looking today at whatever population, whether it's Medicaid, general consumers, over the past 40 years, there have been a great deal of messages surrounding cigarette advertising, marketing and promotion; isn't that right? 16:37 16:38

A. That's true. There have -- large numbers of dollars have been spent on promoting that product category. 16:38

Q. From a social science perspective, could you with any degree of social science certainty test historical measurements of cause and effect as it relates to tobacco industry advertising, marketing and promotion, as we sit here today? 16:38

A. Well, it would be difficult without the benchmark against which to measure, so... 16:38

Q. And the benchmark is gone. Am I correct in that? 16:38

A. Well, they have already been exposed, so you would need a clean slate, so to speak, to set 16:38

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a benchmark.

Q. And that doesn't even take into account all the people who died from tobacco, does it?

MR. PADDOCK: Ed, I don't want to interrupt your deposition, but -- and I don't know what the stipulations are as to form of the questions.

MR. HOHN: No objections.

MR. PADDOCK: But you're leading the witness and you are not going to be able to offer it at trial if you're asking leading questions.

MR. HOHN: You're right, Brady. Let me rephrase it a little bit.

Q. Have consumers of tobacco products died throughout history?

A. Well, there's a relationship. There's evidence of a relationship between smoking and lung cancer and lung cancer and death..

Q. Do you know whether or not people have died in Texas from smoking cigarettes?

A. There -- I have seen evidence of statistics that individuals who are smokers have died.

Q. And specifically concerning Medicaid recipients, do you know or do you think that

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there have been Medicaid recipients who have died from tobacco-related disease that you wouldn't even be able to test against in a social science setting? 16:39

A. Well, as I said, I haven't reviewed evidence or statistics on Medicaid recipients, so it's difficult for me to make a statement on that. 16:40

Q. Just based on your common knowledge. 16:40

A. Well, Medicaid -- Medicaid -- if Medicaid recipients are also smokers, then they are certainly also at risk for higher levels of lung cancer and death. 16:40

Q. Have you seen studies showing a linkage between cigarette advertising, marketing and promotion and initiation among youth? 16:40

A. In the evidence I have reviewed, I have seen studies that report on the initiation of cigarette smoking relative to the expenditures on advertising, marketing and promotion. 16:41

Q. And in conjunction with all those questions that Ms. Tyler gave to you about are you going to testify that cigarette advertising, marketing and promotion by itself caused smoking initiation, have you read documents 16:41

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and publications showing a linkage between cigarette advertising, marketing and promotion and youth initiation of smoking? 16:41

A. In the documents and articles that I have reviewed, I have seen studies that have been published that come to that conclusion. 16:41

Q. I want to talk about the definitions of causation which I gave you before. Well, first of all, let's talk about maybe some percentages. What percentage of the illegal child market -- that's 17 and under -- initiate smoking before age 18, just generally? 16:42

A. Well, I have seen various statistics. I believe 90 percent, 88 to 90 percent is a common figure for initiation. 16:42

Q. Based upon a reasonable degree of marketing, advertising and promotional probabilities, was the advertising conducted by the tobacco companies a cause of the initiation of smoking in the illegal child market? 16:42

A. Well, I believe the evidence I've reviewed shows that there's a likelihood that there's a relationship between the advertising, marketing and promotion and initiation. 16:43

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Q. Is there any way that you know of to test from there a social science perspective the sole cause of advertising, marketing or promotion on initiation, cessation or perceptions in the consuming public? 16:43

A. Well, I think as I have reiterated earlier, one would need to do a longitudinal study where they had a control group that was not exposed to any messages, and a group -- similar group that was tested or rather that was in a situation where they were exposed to advertising promotion and marketing as it's occurred. And with that, then one would be able to attribute sole cause and effect if one could control -- control the advertising, marketing and promotion. 16:44

Q. Would you trust a study that was done today, doing it just the way that you said it, for accurate results, especially concerning the control group of not being exposed to any marketing or advertising by the tobacco industry? 16:44

A. Well, I think it would be difficult to find the control group at this point. Some of the research indicates that three year olds have 16:44

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recognition of logos, so... 16:4
Q. Have you read the studies where the three year olds and six year olds have recognition of tobacco characters? 16:4
A. I have read several studies, as I think we talked about earlier today. 16:4
Q. It is illegal for -- or is it your understanding -- do you know whether or not the tobacco companies can advertise to people under the age of 18? 16:4
A. It's my understanding that it's illegal to advertise and to sell products to individuals under 18. 16:4
Q. Based upon a reasonable degree of marketing, advertising and promotional probabilities, have the tobacco companies targeted the illegal youth market in their advertising, marketing information? 16:4
A. Well, certainly, their advertising, marketing, promotion reaches that group. I have seen documents that suggest that, in fact, there were concerted efforts to reach that group. 16:4
Q. Based upon a reasonable degree of marketing probabilities, advertising probabilities and 16:4

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promotional probabilities, have the tobacco companies attempted to attract the illegal youth market to the initiation of cigarette smoking? 16:46

A. Well, certainly by exposing underage individuals to advertising messages, as well as some of the promotions and marketing devices or tools that are used, that that could have an impact on initiation and attracting them to the product category. 16:46

Q. Based upon the percentages of initiation in the illegal child market under the age of 17, do you have an opinion on whether or not that has happened? 16:46

A. Well, the initiation, the percent of population under 17 that has initiated smoking is 90 percent, so there's a large proportion of that population that is attracted to smoking, and they are outside of the legal age. 16:47

Q. And as for coming up with the specific percentage of the cause and effect, once again, that would be an historical analysis under the social science approach, wouldn't it? 16:47

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A. I'm sorry. What was the question? 16:47
Q. Would you have to test for an actual 16:47
percentage under an historical analysis of 16:47
the social science approach on the cause and 16:47
effect of initiations due to cigarette 16:47
advertising, marketing and promotion? 16:47
A. Usually historical research doesn't -- while 16:47
adhering to rigorous standards, does not 16:47
adhere to hypothesis testing that requires or 16:47
sets criteria in the 95 percent confidence 16:47
limits. 16:48
Q. Would that be inappropriate? 16:48
A. Well, it would probably be difficult to do 16:48
given the nature and the data that one would 16:48
use in historical analysis. 16:48
THE COURT REPORTER: That one would
use --
THE WITNESS: Use.
THE COURT REPORTER: In?
THE WITNESS: In historical
analysis.
Q. The -- in response to a few questions by 16:48
Mr. Paddock, when he was talking about the 16:48
ideal way to measure Medicaid -- well, 16:48
actually, he said wouldn't the best way or 16:48

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the ideal way to analysis whether somebody started smoking because of advertising would be to talk to the person. Would you agree with that? 16:48

A. I believe that he said that it would be -- that the best way would be to actually speak with the person. 16:48

Q. Do you hold that same opinion? 16:48

A. Well, I believe that there are different ways to get at those kinds of issues and that it may not be necessary to actually speak with a person, although I'm not familiar, as I said, with the Medicaid data per se. 16:49

Q. You are familiar with primacy and recency, right? 16:49

A. I am, yes. 16:49

Q. With all the information that's coming out about the tobacco companies and the tobacco industry, just in the past few months, would that affect any type of statistical study or undertaking that was taken on really any population in the American consuming public concerning the initiation, consumption, cessation of cigarette products? 16:49

A. Well, clearly there's a lot of visibility in 16:49

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the media now on this issue and has been for a while, and certainly with the trials and the settlement that's even more so. So that would tend to bias any samples of individuals or populations that one might want to look at for research purposes. 16:49 16:49 16:49 16:50 16:50 16:50

Q. Would you be extremely skeptical of any type of study that was done specifically now concerning Medicaid recipients or other consumers surrounding initiation, cessation or the continuation of smoking products? 16:50 16:50 16:50 16:50 16:50 16:50

A. Well, I would look at the study and evaluate it like I would any study relative to the nature of how rigorous it had held to good research criteria. 16:50 16:50 16:50 16:50

Q. You also answered a couple of questions concerning the Congressionally mandated warning that's attached to some cigarette advertisements. Do you know whether or not that is the warning that's been placed on the cigarette products by the manufacturers of those products? 16:50 16:50 16:50 16:50 16:50 16:51 16:51

A. The Congressionally mandated warning? 16:51

Q. Correct. 16:51

A. It's my understanding that there are several 16:51

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warning messages that may be placed and used on -- ideally certainly on packaging and on advertising messages. 16:5

Q. My question is: Did the government put it on there, or did the tobacco companies put it on there? 16:5

A. Well, my understanding is that it is a -- that's part of the -- what makes cigarette advertising unique in that it's required to be on there, but it is a requirement, a federal requirement. 16:5

Q. Have you ever heard anything where the tobacco companies have said that's not their warning, that that's the government warning that they are required to put on the package? 16:51

A. I'm not familiar that I have reviewed any articles or evidence speaking to that. 16:52

Q. Based upon the definitions that I have given you concerning producing and proximate cause, would you have different responses to Ms. Tyler's questions concerning the causation of marketing, advertising and promotion by the cigarette industry and the initiation, cessation and continuation of the smoking habit among consumers in the State of 16:52

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Texas and the United States of America?
A. Well, clearly after you've read the legal definition of cause relative to social science definition of cause, there -- they are different. And so my answers to her questions were based on a social science definition.
Q. The 95 percent certainty or rigor?
A. Assuming, right, that -- a 95 percent confidence level on acceptance.

MR. HOHN: We'll reserve the rest of our questions until the time of trial.

FURTHER EXAMINATION

BY MS. TYLER:

Q. I have three follow-up questions quickly and we will hopefully be done.

Professor Stout, in answer to Mr. Hohn's questions regarding a study of Medicaid recipients, asking Medicaid recipients regarding the role, if any, of cigarette advertising, marketing and promotion on their smoking initiation, I want to ask you this: Given all the attention in the media regarding the alleged tobacco industry misconduct, would you expect such

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studies of Medicaid recipients regarding the role of cigarettes advertising, marketing and promotion to be biased in favor of cigarette advertising, marketing and promotion causing initiation or against it? 16:54

A. Well, it would be hard for me to speak to what their attitudes would be. I would agree, though, that there's been a lot of visibility of this issue in the media of late and that I would -- I would be concerned about the bias nature of the sample in that if I were reviewing the study, I would take that into account. 16:54

Q. But given all of the discussion, and let's say especially in the State of Texas where this case is currently pending with regard to the attorney general's suit against the tobacco industry, all the other lawsuits against the tobacco industry both brought by attorneys general, class actions and individuals, given all of that public media attention, and you've just testified that you would expect there to be bias, my question to you is: Would you not expect that bias from those Medicaid recipients, if such a study 16:55

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were done, to be in favor of cigarette advertising, marketing and promotion playing a role or causing smoking initiation, rather than cigarette advertising, marketing and promotion not causing initiation? 16:55

A. Well, it's difficult to say. As I said, people who are smokers may not have positive attitudes about the activities that are going on. They may feel that the tobacco industry is being unfairly singled out, so it's hard to know relative to what the different opinions might be based on smokers and nonsmokers, et cetera. But I clearly would expect that there may be a bias in the sample, and I would look at that when I would evaluate the study. 16:55 16:56

Q. So it's your testimony as an expert testifying before a judge and jury in this case that you would expect such a study to be biased, but you have no idea in what direction. Is that your testimony? 16:56

A. Well, I'm testifying that I would look to the sample as perhaps being biased, so I couldn't -- like I said, I would want to look at their media use habits to see if, in fact, 16:56

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that they have been exposed to media. I would look at a number of different things if I were to conduct that study so that I would have some kind of a picture profile of the sample that I'm looking at to see if, in fact, what potential impact this visibility of this case may have had on their individual responses to whatever questions were in the study.

Q. And we have established here today that you have no information regarding the Medicaid recipients at issue in this case; is that right?

A. I have at this time not reviewed any statistics or articles that have been published or documents concerning Medicaid.

Q. And you don't know what their review of the media is; is that correct? You don't know what their exposure to media is, I understand?

A. Oh, Medicaid recipient's exposure to media?

Q. Correct.

A. I don't believe I have seen any research looking at that as a target group relative to their media use habits.

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Q. Have you seen any information regarding exposure of Medicaid recipients in the State of Texas? 16:57

A. As I said, I have not seen research on -- to my knowledge on Medicaid. I haven't reviewed research on Medicaid recipients. 16:57

Q. Professor Stout, in order to assess what an individual takes away from a given advertisement, one would need to know what that individual knows or is aware of regarding the health risks of cigarette smoking in viewing those advertisements; isn't that correct? 16:57

A. I would want to get a baseline essentially or get a profile of individuals relative to a number of different things based on knowledge, and certainly there's evidence relative to the behavior on gender and age, for example. So there are a number of different criteria I would want to measure of my respondents, and I would take that into account as I would interpret my findings relative to how they process the message. 16:58

Q. And, Professor Stout, you have undertaken no systematic analysis of what information 16:58

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individuals in the State of Texas were exposed to in popular culture, in media, in schools or anywhere else with regard to the health risks of smoking; isn't that correct? 16:58

A. Well, we had discussed specifically I think newspapers and magazines and school textbooks, and you had just mentioned popular culture. And there's some consensus in my area that advertisements are part of the popular culture, so... 16:58 16:59

Q. Taking advertisements out of the purview for a moment, have you undertaken any systematic study or systematic analysis of what information individuals in the State of Texas were exposed to with regard to the health risks of cigarette smoking? 16:59

A. I believe that I had said that I have not taken any -- undertaken any systematic content analyses of newspapers or magazines or school textbooks that individuals are exposed to in the State of Texas. 16:59

Q. I can promise you that this will be the last question I will ask you if I can get an answer to it. And I'll ask it one more time. Have you undertaken any systematic analysis 16:59

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or study of what information individuals in the State of Texas were exposed to with regard to the health risks of smoking? 16:59

A. I have not personally conducted any studies of individuals that have measured their health related knowledge on smoking, advertising or tobacco use. 16:59 17:00

Q. And do you rely on the systematic study or analysis of anyone else in coming to your conclusions on that subject in this case? You said you personally haven't done it. I'm trying to ascertain if you are relying on someone who has. 17:00

A. Right. Well, there certainly are studies that are available that look at some of these things, certainly the surgeon general's report and -- on a national level, and there are surveys that are undertaken for the State of Texas behavioral risk factor studies that are undertaken that would be able to contribute some information or knowledge to this issue. 17:00

Q. But you personally have never undertaken such a study? 17:00

A. I personally have not conducted a study where 17:00

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I have queried individuals about their knowledge about smoking tobacco -- smoking or tobacco use. 17:01

Q. Well, you wouldn't need to query the individual if you could look at what individuals in the State of Texas were exposed to. So if you haven't done such a systematic study, then you have personally not studied the issue of what individuals in the State of Texas are exposed to. Would you agree with that? 17:01

A. I think I heard two questions there. I heard the question of systematic content analysis of information as it's disseminated so I could see how many articles are published in newspapers or magazines. 17:01

Q. Have you done that? 17:01

A. We -- I think we talked about that before. 17:01

Q. Okay. 17:01

A. And I believe that I said I have not undertaken any systematic studies, content analyses of smoking and health related issues in newspapers, magazines or school textbooks. 17:01

I guess I heard a second question 17:01

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that had to do with the individuals's knowledge level, and I have not queried individuals. I have not done a systematic studies of individuals to ascertain their levels of knowledge in this area of smoking and health related issues. 17:01 17:01 17:01 17:02 17:02 17:02

MS. TYLER: I have no further questions at this time. However, it is the position of defense counsel that this deposition -- oh, you have further questions? 17:02 17:02 17:02 17:02 17:01

MR. HOHN: I do. 17:02

FURTHER EXAMINATION

BY MR. HOHN:

Q. A few follow-up questions. Tobacco company marketer controlled stimuli is the most powerful tool the tobacco companies have over the consumer decision making process; isn't that right? 17:02 17:02 17:02 17:02 17:02

A. Well, clearly a large amount of dollars are spent annually on advertising, promotion and marketing for cigarettes and tobacco related products. 17:02 17:02 17:02

Q. And for the benefit of judge and jury, how much money is that annually, just rough 17:02 17:02

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numbers?
A. Well, I have seen different figures, topping 6 million and more.
Q. 6 billion?
A. 6 billion -- 6 billion -- 5 to 6 billion in '94 I think was what I saw.
Q. Does that have significance and influence on initiation of smoking?
A. Well, I have reviewed studies that have shown a link between expenditures and initiation levels.
Q. But for the substantial amounts spent by the tobacco industry on advertising, marketing and promotion, would the percentages of initiation in the illegal child market under age 17 be 90 percent?
A. Well, it's difficult to ascertain a percentage on that. Clearly, large amounts of dollars are spent, and initiation rates are very high. Messages reach that age group, and so the expenditures -- like I say, I have reviewed -- I have reviewed literature that has indicated a link between those expenditures and those levels of initiation or rates of initiation.

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MR. HOHN: Reserve the rest of our questions until the time of trial. 17:04

MS. TYLER: On the record, I do have to take this opportunity to object to the fact that this witness completed an affidavit, never -- if it was completed after her expert disclosure, which I -- testified under oath here today that you, despite what the notary wrote in terms of date, that you wrote that affidavit after the expert disclosure, I have to object that her expert disclosure was in no way ever supplemented. And I think we have also ascertained here today she has reviewed the additional materials since the filing of her expert disclosure. She has reviewed additional materials since her deposition with me and she has reviewed additional materials probably since the filing of her affidavit. And I think that she's indicated that those materials may or may not have been disclosed to you, and so clearly they may or may not have been disclosed to me. And it's clearly my position that they probably haven't been. And --

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MR. HOHN: Did you go through the materials that we sent to you to D.C.? 17:05

MS. TYLER: I have reviewed every piece of paper. 17:05

MR. HOHN: Because they have been sent to you. I oversaw it myself this time, and I know they've been sent to you. 17:05

MS. TYLER: My letter of August 26, Ed, only addressed materials that I knew about because I was questioning her about them and she identified them in a deposition. Since that time, she has revised her opinions. And she testified here today that she reviewed additional materials in order to revise that opinion. Those are the materials I couldn't possible have because I didn't know about them in order to ask her questions on August 21 and 22. So for that reason I suspend this deposition, reserve my right to request sanctions from the Court, and I reserve my right to come back yet again. And I apologize to you, Professor Stout, because this should never have occurred. 17:05 17:06

MR. HOHN: Well, she hasn't --

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first of all, for the record, I'd like to state on there, first of all, she has not amended or altered her opinions. She said that in the deposition. And the affidavit is in complete conjunction with the expert report, and if she's looked at other studies which support that report, there's absolutely no reason why she should come back here for any more time. We've already spent 12 hours plus with this witness. 17:06

In addition to that, you have been sent the materials before this deposition, and there's a continuation to supplement. And that's -- in the paragraph under the expert disclosure report, she specifically states, specifically, but without limitation Doctor Stout intends to offer the following opinions at trial, but without limitation. And the information is going to be ongoing and continues to accrue. We're still going through the 700 plus documents. I mean, there's going to be some of this. 17:06 17:07

So we note your objection. We do not tender and will not tender the witness again, and you can take whatever you like 17:07

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with the court. 17:07

MS. TYLER: Sounds fine. We 17:07

certainly will. 17:07

THE VIDEOGRAPHER: Off the record 17:07

at 5:07. 17:07

(Deposition Exhibit No. 11

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No erasures or obliterations of any kind are to be made to the original testimony as transcribed by the deposition officer. Any changes in form or substance which the witness desires to make shall be furnished to the deposition officer by the witness, together with a statement of the reasons given by the witness for making such changes.

Please enter the page number, line number, and the reason for such change or correction.

Page/Line	Correction	Reason for Correction

_____
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WITNESS' SIGNATURE

STATE OF _____)
)
COUNTY OF _____)

I HEREBY CERTIFY that I have read the foregoing deposition and that this deposition, together with my corrections, is a true record of my testimony given at this deposition.

_____
PATRICIA A. STOUT

SUBSCRIBED AND SWORN TO BEFORE ME this the _____ day of _____, 19____.

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REPORTER'S CERTIFICATE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

THE STATE OF TEXAS, Plaintiff VS. THE AMERICAN TOBACCO COMPANY; R.J. REYNOLDS TOBACCO COMPANY; BROWN & WILLIAMSON TOBACCO CORPORATION; B.A.T. INDUSTRIES, P.L.C.; PHILIP MORRIS, INC.; LIGGETT GROUP, INC.; LORILLARD TOBACCO COMPANY, INC.; UNITED STATES TOBACCO COMPANY; HILL & KNOWLTON, INC.; THE COUNCIL FOR TOBACCO RESEARCH-USA, INC. (Successor to Tobacco Institute Research Committee); AND THE TOBACCO INSTITUTE, INC., Defendants	CIVIL ACTION NO. 5-96CV91

* *

PATRICIA A. STOUT
VOLUME III

* *

I, SALLY KING, Certified Court Reporter for the State of Texas, do hereby certify that the facts stated by me in the caption hereof are true; that the said witness did make the above and foregoing answers in response to questions

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propounded as shown; that I did, in shorthand, report said proceedings, and that the above and foregoing typewritten pages contain a full, true and correct computer-aided transcription of my shorthand notes taken on said occasion.

I further certify that I am not in any capacity a regular employee of the party in whose behalf this deposition is taken, nor in the regular employ of any attorney of record; and I certify that I am not interested in the cause, nor a kin or counsel to either of the parties.

WITNESS MY HAND this the 24th day of September, 1997.

Sally King

SALLY KING, CSR
Certified Court Reporter
For the State of Texas
CSR No. 2299
Expiration Date: 12-31-97

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